

House Research Act Summary

CHAPTER: 323—Vetoed

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TOPIC: DHS Policy

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Article 1: Child Welfare

Overview

This article contains changes to adoption law, amends the Interstate Compact on Placement of Children, and makes modifications to the laws related to child protection and voluntary foster care.

- 1 **Policy and purpose.** Amends §259.20, subdivision 1. Changes “children” to “adopted persons” to reflect that this section applies to child and adult adopted persons.
- 2 **Adult adoption.** Amends §259.21 by adding subd. 2a. Defines “adult adoption” as the adoption of a person at least 18 years of age.
- 3 **Persons who may be adopted.** Amends §259.22, subd. 2. Strikes “child” and replaces it with “person” to reflect that this section applies to child and adult adopted persons.
- 4 **Contents of petition.** Amends §259.23, subd. 2. Provides clarifying language to reflect that this section applies to children and adults who are to be adopted.
- 5 **Adult adoption.** Creates §259.41. Paragraph (a) states that any adult person may be adopted; a resident of Minnesota may petition the court to adopt an adult individual.

Paragraph (b) provides that the only consent necessary is the consent of the adult to be adopted. An individual who is considered to be a vulnerable adult or who is determined not competent cannot give valid consent to be adopted.

Paragraph (c) states that the adoption decree establishes the legal parent-child relationship, including the right to inherit. Makes clear that the adoption decree terminates the parental

rights and sibling relationship between the adopted person and the birth family.

Paragraph (d) provides that if the adopted person requests a name change, the adoption decree shall order the name change.

6 **Study required before placement; certain relative excepted.** Amends §259.41, subdivision 1.

- Adds a statutory reference that adoption studies may be paid through the Public-Private Adoption Initiative.
- Adds that in a stepparent adoption, a background study must be completed on the stepparent and the stepparent's children, unless the stepparent's child is also a sibling of the child to be adopted. Permits a reasonable fee to be charged for the background study. Provides that a background study and adoption study are not needed in an adult adoption.

7 **Birth parent history; commissioner's form.** Amends §259.43. Clarifies the requirements for information that must be contained in the child's social and medical history and who receives a copy of the history. Requires that the history contain background and health history specific to the child, the child's birth parents, and the child's other birth relatives. Provides that redacted copies of pertinent records, assessments, and evaluations shall be attached to the history.

8 **Requirement to search registry before adoption petition can be granted; proof of search.** Amends §259.52, subd. 2. Permits the county social service agency access to the Putative Father's Registry within 31 days of the child's birth for children who are subject to child protection proceedings.

9 **Reports and records.** Amends §259.53, subd. 3. Authorizes the guardian ad litem to have access to the adoption home study.

10 **Findings; orders.** Amends §259.57, subdivision 1. Provides clarifying language to reflect that this section applies to children and adults who are to be adopted.

11 **Legal effect.** Amends §259.59, subdivision. 1. Provides clarifying language to reflect that this section applies to children and adults who are to be adopted.

12 **Enrollment in American Indian tribe.** Amends §259.59, subd. 2. Strikes "child" and inserts "person."

13 **Adoption assistance agreement.** Amends §259.67, subd. 2. Strikes "adopted person's" and inserts "child's."

14 **Modification or termination of the adoption assistance agreement.** Amends §259.67, subd. 3. Eliminates the requirement for submission of the annual adoption assistance affidavit.

15 **Recovery of overpayments.** Amends §259.67 by adding subdivision 3a. Permits the commissioner to recover overpayments of adoption assistance even when the overpayment was caused by agency error or circumstances outside the responsibility of the family or provider.

16 **Eligibility conditions.** Amends §259.67, subd. 4. Adds that state funded adoption assistance is available to a child's relative who desires to adopt the child. Adds that a child who is adopted by the child's legal custodian or guardian is not eligible for state funded adoption assistance. Corrects a cross-reference to federal law regarding special needs children.

17 **Withdrawal of registration.** Amends §259.75, subd. 5. Strikes language that permits

withdrawal from the adoption exchange for children 14 and over who have not consented to an adoption plan. Legislation in 2007 eliminated the provision that children 14 and over could refuse to consent to an adoption plan.

- 18 **Request.** Amends §259.89, subdivision 1. Permits the commissioner of health to communicate directly with county social service or private adoption agency to exchange information when an adult adopted person has requested access to their original birth records. Current law requires all communication to go through the commissioner of human services.
- 19 **Search.** Amends §259.89, subd. 2. Specifies the methods of contact to be used in making contact with birth parents. Permits county social service or private adoption agencies to make this contact.
- 20 **Release of information after notice.** Amends §259.89, subd. 4. Allows county social service or private adoption agencies to certify to the commissioner of health that contact has been made with the birth parents named on the original birth record. Current law requires certification from the commissioner of human services.
- 21 **Adult adoptions.** Amends §259.89 by adding subd. 7. Permits a person adopted as an adult access to the original birth records the same as that access allowed prior to the adoption.
- 22 **American Indian child welfare advisory council.** Amends §260.835, subd. 1. Extends the expiration date of the advisory council from June 30, 2008, to June 30, 2012.
- 23 **Interstate compact for placement of children.** Creates §260.853. This section amends the Interstate Compact for Placement of Children (ICPC) so that it is consistent with standards that are being adopted nationwide.
- 24 **Child in need of protection services.** Amends §260C.001, subd. 2. Provides that when a child must be removed from the child’s family, the responsible social services agency has legal responsibility to remove the child pursuant to a voluntary placement agreement or by court order. When placement is by court order, the order is to contain an individualized determination that the placement is in the best interests of the child. Specifies that the preferred order of placement is with a noncustodial parent, a relative, or a foster home.
- 25 **Child abuse.** Amends §260C.007, subd. 5. Makes the definition of “child abuse” consistent with the definitions of physical and sexual abuse in §626.556, subdivision 2, the Maltreatment of Minors Act.
- 26 **Child in need of protection or services.** Amends §260C.007, subd. 6. Makes the definition of “child in need of protection or services” consistent with the definitions of child abuse in §626.556, the Maltreatment of Minors Act.
- 27 **Domestic child abuse.** Amends §260C.007, subd. 13. Makes the definition of “child abuse” consistent with the definitions of physical and sexual abuse in §626.556, subdivision 2, the Maltreatment of Minors Act.
- 28 **Jurisdiction over other matters relating to children.** Amends §260C.101, subd. 2. Authorizes juvenile court jurisdiction over voluntary foster care placements of children placed for treatment under chapter 260D.
- 29 **Review of foster care status.** Amends §260C.141, subd. 2. Makes technical changes to differentiate between voluntary foster care under chapter 260C and voluntary foster care for treatment under chapter 260D.
- 30 **General.** Amends §260C.163, subdivision 1. Provides that child protection proceedings (CHIPS) are presumed accessible to the public; permits the court to close any hearing and the records related to the matter as provided in the Rules of Juvenile Protection Procedure.
- 31 **Public inspection of records.** Amends §260C.171, subd. 2. Provides that records from child protection, permanency, or termination of parental rights proceedings are accessible to the public as authorized by the Rules of Juvenile Protection Procedure.

- 32 **Hearing and release requirements.** Amends §260C.178, subdivision 1. Provides that at the emergency removal hearing the court can place the child with the noncustodial parent or return the child to the home of the parent under court ordered conditions to meet the safety, health, and welfare of the child. The court is not to give legal custody to the responsible social service agency or order a trial home visit prior to adjudication and disposition.
- 33 **Dispositions; voluntary foster care for treatment.** Amends §260C.205. States that when a parent or guardian brings a petition under chapter 260D, the court may find the child's needs are not being met and order the social service agency or the parents to take necessary actions to meet the child's needs.
- 34 **Subjects.** Amends §260C.209, subdivision 1. Authorizes the county social service agency to have access to the criminal history and history of adult and child maltreatment to determine if it is safe for a child to be in the care of a noncustodial parent or relative or returned to the care of a custodial parent.
- 35 **General procedures.** Amends §260C.209, subd. 2. Permits access to local law enforcement data when doing background checks.
- 36 **Assessment for emergency relative placement.** Amends §260C.209 by adding subd. 5. Permits the county social service agency access to relatives' criminal histories and history of maltreatment of a child or an adult for the purpose of assessing a child's safety if placed in the home. Provides that this assessment does not substitute for the background study required under chapter 245C or the requirements related to emergency placement under §245A.035.
- 37 **Out-of-home placement; plan.** Amends §260C.212, subdivision 1. Requires an out-of-home placement plan to be completed within 30 days of a child's placement under chapter 260D.
- 38 **Responsible social service agency's duties for children in placement.** Amends §260C.212, subd. 4. Requires the responsible social service agency to provide a child with a copy of the child's social and medical history if the child leaves foster care at age of majority.
- 39 **Monthly caseworker visits with children in foster care.** Amends §260C.212 by adding subdivision 4a. Sets out the requirements for monthly caseworker visits with children who are in out of home care or on a trial home visit. These requirements conform to federal requirements.
- 40 **Administrative or court review of placements.** Amends §260C.212, subd. 7. Provides that the administrative review panel shall include at least one person who has no involvement with any aspect of case management for the case being reviewed. Permits a court hearing to substitute for the required administrative review.
- Adds that at any administrative or court review of the case of a child age 16 or older, the child's independent living plan must be reviewed. This review must include the actual plans related to each item in the independent living plan. Requires the social service agency to give notice of the child's right to continued access to services past age 18. If the child plans to leave foster care at age 18, the court must make findings regarding progress toward or accomplishment of specified goals. Lists the documents the agency is to ensure the child has in the child's possession.
- 41 **Voluntary foster care; required court review.** Amends §260C.212, subd. 8. Makes technical changes to differentiate between voluntary foster care under chapter 260C and voluntary foster care for treatment under chapter 260D.
- 42 **Transfer of custody.** Amends §260C.325, subdivision 1. Clarifies that guardianship and legal custody of a child is to be transferred to the commissioner only when the child has been in foster care through the county.

43 **Both parents deceased.** Amends §260C.325, subd. 3. Clarifies that the guardianship and legal custody of a child whose parents are deceased is to be transferred to the commissioner only if there is no other individual who is willing and capable of caring for the child.

44 **Child in voluntary foster care for treatment.** Creates section 260D.001. Paragraph (a) provides that sections 260D.001 to 260D.301 may be cited as the “child in voluntary foster care for treatment” provisions of the Juvenile Court Act.

Paragraph (b) states that the juvenile court has jurisdiction when a report or petition is filed.

Paragraph (c) provides that the purposes of this chapter include:

- establishing voluntary foster care for a child who needs treatment for an emotional disturbance or developmental disability;
- establishing the court’s jurisdiction for these cases; and
- establishing responsibilities for the parents and the social services agency.

Paragraph (d) makes clear that this chapter does not apply when there is a current determination that a child needs protective services or is in foster care for any reason other than treatment for an emotional disturbance or developmental disability.

Paragraph (e) states that the best interests of the child are the primary consideration.

Paragraph (f) supports the legal parent-child relationship.

Paragraph (g) states that this chapter is to be construed consistently with the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and the provisions of section 260.012.

45 **Definitions.** Creates §260D.005. Provides that the definitions in 260C.007 apply to this chapter. In addition this section defines the following terms: “agency,” “case plan,” “child,” “child in voluntary foster care for treatment,” “compelling reasons,” “court,” “developmental disability,” “emotionally disturbed or emotional disturbance,” “foster care,” “legal authority to place the child,” “minor,” “parent,” and “reasonable efforts to finalize a permanent plan for the child.”

46 **Voluntary foster care.** Creates §260D.101.

Subd. 1. Voluntary foster care. Provides that upon determination of need for placement, a voluntary foster care agreement between the agency and the parent gives the agency authority to place the child in foster care.

Subd. 2. Voluntary foster care agreement. Sets out the legal requirements, duties, and obligations of a voluntary foster care agreement.

47 **Required information for a child in voluntary foster care for treatment.** Creates §260D.102. Lists the information an agency must share with a child who is 12 years or older and in voluntary foster care for treatment.

48 **Administrative review of child in voluntary foster care for treatment.** Creates §260D.103. Requires administrative reviews within specified time frames for children in voluntary foster care for treatment.

49 Agency report to the court and court review of child in voluntary foster care for treatment due to disability. Creates §260D.105.

Subd. 1. Judicial review. Requires a judicial review of placement within 165 days of the placement.

Subd. 2. Agency report to court; court review. Sets out the required elements of the agency's required report to the court. Provides that the court is to make determinations and findings on the child's best interests and agency and parent planning for the child.

50 Required permanency review hearing. Creates §260D.107. Paragraph (a) provides that if a child has continued in voluntary foster care for 13 months or for 15 of the past 22 months, the agency must terminate the voluntary foster care agreement and return the child home; determine whether compelling reasons exist for the child to remain in voluntary foster care; or file a petition for termination of parental rights.

Paragraph (b) requires the agency to file a petition for permanency review regarding a child in voluntary foster care for treatment when there are compelling reasons to continue the child in care.

Paragraph (c) instructs the county attorney to file the petition in paragraph (b) and lists the elements that it is to include.

Paragraph (d) requires that an updated out-of-home placement plan is to be filed with the petition.

Paragraphs (e) and (f) set out the requirements for the permanency review.

Paragraph (g) sets out the issues the court is to review at the permanency hearing.

Paragraph (h) gives the court authority to take specific actions.

Paragraph (i) allows a child age 12 or older to object to the agency's request for continued placement. Authorizes the court to continue placement despite the child's objection.

Paragraph (j) instructs the court to dismiss the petition if it does not approve the voluntary placement agreement and either return the child to the care of the parent or order the agency to file a petition under 260C.141.

Paragraph (k) provides the circumstances under which the court can approve continued placement and retain jurisdiction of the case.

Paragraph (l) states that if the court approves continued placement, the agency continues to have the legal authority to place the child. Permits either the parent or the agency to terminate the voluntary agreement under specified circumstances.

51 Annual review. Creates §260D.109. Requires an annual judicial review of the child's placement to ensure that the child's best interests are being served, that the parents remain involved in the planning and decision-making, and that the out-of-home placement plan addresses the needs of the child.

52 **Permanency review after adjudication under chapter 260C.** Creates §260D.201. States that if a child has been ordered into foster care under a CHIPS petition and the conditions that led to placement have been corrected so that the child could be returned home except for the child's continued need for foster care for treatment, the child's parents and the agency may enter into a voluntary foster care agreement under this chapter.

53 **Termination of voluntary placement agreement.** Creates §260D.301. Paragraph (a) allows the parent to terminate the agreement upon written notice to the agency.

Paragraph (b) permits the agency to terminate the agreement upon written notice to the parent. Instructs the agency to contact the parent about transition planning before sending the notice.

Paragraph (c) provides that the parties may agree on a time for the child to return home.

Paragraph (d) states that a parent who disagrees with the termination of the agreement is entitled to a fair hearing.

Paragraph (e) instructs the agency and the parents to engage in transition planning for the child's return home.

Paragraph (f) provides that the notice to termination does not terminate the agreement; the agreement is terminated either by the child's return home or a court order.

54 **Meaning of child and related terms.** Amends §524.2-114. Substitutes the word "child" for "adult," to make clear that this section applies to child adoptions.

55 **Report.** Amends 626.556, subd. 7. Requires the local welfare agency to determine whether a report of child maltreatment is accepted for an investigation or assessment within 24 hours after the report is received.

56 **Law enforcement agency responsibility for investigation; welfare agency reliance on law enforcement fact-finding; welfare agency offer of services.** Amends §626.556, subd. 10a. Strikes "harm" and inserts "injury."

57 **Targeted case management services for children.** Instructs the commissioner of human services to seek an amendment to the state plan to provide targeted case management services to children with developmental disabilities.

58 **Revisor's instructions.** Instructs the revisor to correct specified cross-references. Provides that this section is effective upon legislative enactment of the interstate compact in section 25 by no less than 35 states.

59 **Repealer.** Paragraph (a). Repeals §260.851, Interstate Compact on Placement of Children, effective upon legislative enactment of the interstate compact in section 25 by no less than 35 states.

Paragraph (b). Repeals §§260B.241 (legislative report on achievement of goals of court ordered placements); 260C.141, subd. 2a (voluntary foster care placement); 260C.207 (legislative report on achievement of goals of court ordered out-of-home placements); 260C.431 (tests, examinations); and 260C.435 (special provisions in certain cases).

Paragraph (c). Repeals 2007 Supplement §260C.212, subd. 9 (review of certain child placements—developmentally disabled or emotionally disturbed child).

Repeals Minnesota Rules, parts 9560.0092 (annual adoption subsidy affidavit); 9560.0093,

subp. 2 (unilateral modification of adoption subsidy by the commissioner); and 9560.0609 (court review of voluntary placements).

Article 2: Licensing.

Overview

This article amends human services background laws related to disqualification from contact with vulnerable populations.

- 1 **Disqualification from direct contact.** Amends §245C.14, subdivision 1. Changes the evidentiary standard from a preponderance of evidence to clear and convincing evidence in order to disqualify an individual from having direct contact with persons receiving services from the department.
 - 2 **15-year disqualification.** Amends §245C.15, subd. 2. Requires a disqualification to be based on clear and convincing evidence, not a preponderance of evidence.
 - 3 **Ten-year disqualification.** Amends §245C.15, subd. 3. Requires a disqualification to be based on clear and convincing evidence, not a preponderance of evidence.
 - 4 **Seven-year disqualification.** Amends §245C.15, subd. 4. Requires a disqualification to be based on clear and convincing evidence, not a preponderance of evidence.
 - 5 **Permanent bar to set aside a disqualification.** Amends §245C.24, subd. 2.
 - Permits the commissioner to set aside a disqualification for an individual in the chemical dependency field whose disqualification was set aside prior to July 1, 2005, and was granted a variance prior to August 1, 2008.
 - Instructs the commissioner to consider granting a set aside for any individual who was disqualified for a crime under section 245C.15, subdivision 1, and whose disqualification was set aside prior to July 1, 2005. States that the employer of an individual who provides in home services is to provide quarterly monitoring.
 - Allows the commissioner to set aside a disqualification for an offense committed under section 609.66, subdivision 1e (felony; drive-by shooting), under specified circumstances.
- Provides an effective date of August 1, 2008.
- 6 **Ten-year bar to set aside disqualification.** Amends §245C.24, subd. 3. Requires a disqualification to be based on clear and convincing evidence, not a preponderance of evidence.
 - 7 **Fair hearing when disqualification is not set aside.** Amends §245C.27, subdivision 1. Requires the evidentiary standard of clear and convincing evidence.
 - 8 **Conclusive disqualification determination.** Amends §245C.29, subd. 2. Requires a showing of clear and convincing evidence before the commissioner can make a conclusive disqualification determination.
 - 9 **State agency hearings.** Amends §256.045, subd. 3. Changes “preponderance” to “clear and convincing.”
 - 10 **Standard of evidence for maltreatment disqualification hearings.** Amends §256.045, subd. 3b. Provides that for hearings regarding disqualification, the referee shall affirm the

proposed disqualification if:

- a preponderance of evidence shows the individual has committed serious or recurring maltreatment under the Maltreatment of Minors Act or the Vulnerable Adults Act;
- clear and convincing evidence that the individual has committed an act or acts meeting the definition of any crimes listed in section 245C.15, subdivision 1 to 4; or
- a preponderance of evidence shows the individual failed to make required reports under the Maltreatment of Minors Act or the Vulnerable Adults Act for incidents which were substantiated as serious or recurring.

Article 3: Data Privacy

Overview

This article clarifies that child care provider data is not welfare data and that data from specified programs can be shared for the purpose of program evaluation.

- 1 Child care resource and referral programs.** Amends §13.46 by adding subd. 12. Provides that this subdivision applies to data collected by child care resource and referral programs. States that this data is not licensing data under subdivision 4. Data on unlicensed family child care providers is data on individuals. Permits disclosure of the names and addresses of unlicensed family child care providers to the commissioner of education.
- 2 Family, friend, and neighbor grant program.** Amends §13.46 by adding subd. 13. Provides that the commissioner may disclose private data collected under this section to early childhood and education experts at the University of Minnesota to evaluate the impact of program grants on children's school readiness. Permits disclosure of the names and addresses of family, friend, and neighbor caregivers to the commissioner of education.
- 3 Commissioner of human services duties; early childhood and school-age professional development training.** Amends Laws 2007, chapter 147, article 2, section 56. Adds subd. 3. Provides that data collected by the child care practitioner professional development system is welfare data under section 13.46, but is not licensing data. Data on individuals who are licensed family child care providers is private data on individuals. The commissioner can disclose nonpublic data under this section as described in section 13.46, subdivision 2. Permits the commissioner to disclose private and nonpublic data collected under this section to specified entities.

Article 4: Adoption

Overview

This article permits adopted persons age 19 and older to have access to a noncertified copy of their original birth record if there is no affidavit of nondisclosure on file.

- 1 **Adoption records.** Amends § 13.465, subdivision 8. Updates a cross reference to a section of law proposed in this bill.
- 2 **Adoption.** Amends § 144.218, subdivision 1. Provides that an original birth record is private data on individuals; current law classifies this as confidential. Adds that an adopted person who is at least 19 years of age shall be able to access the information contained on the original birth record. Adds a cross reference to proposed coding in this bill.
- 3 **Data about births.** Amends § 144.225, subdivision 2. Adds a cross reference to proposed coding in this bill.
- 4 **Access to original birth record after adoption.** Amends § 144.2252. Changes a cross reference to proposed coding in this bill.
- 5 **Access to original birth record by adopted person.** Proposes coding for § 144.2253.

Subd. 1. Affidavits. Instructs the department to prepare affidavits of disclosure and nondisclosure. Requires the department to make the forms readily accessible on the department's website.

Subd. 2. Disclosure. Provides that the state registrar shall provide a noncertified copy of the original birth certificate upon request to an adopted person age 19 or older unless there is an affidavit of nondisclosure on file. Instructs the state registrar to honor both affidavits of disclosure and nondisclosure.

Subd. 3. Rescission of affidavit. Allows a birth parent to rescind an affidavit of disclosure or an affidavit of nondisclosure at any time.

Subd. 4. Affidavit of nondisclosure; access to birth record. Paragraph (a) permits an adopted person age 19 or older to petition the court for access to the birth record. After consideration of all interests if the court determines disclosure of the information would be of greater benefit than nondisclosure, then the court shall grant the petition.

Paragraph (b) permits an adopted person age 19 or older to request that the state registrar search state death records to determine if the birth parent is deceased. Permits imposition of a fee for the search. If the birth parent is deceased, the registrar is to release the birth record only to the adopted person making the request.

Subd. 5. Outreach; counseling. Paragraph (a) instructs the department, in consultation with adoption agencies and adoption advocates, to develop and conduct outreach and education campaigns on the changes regarding accessibility to birth

records.

Paragraph (b) provides that the department is to provide a fact sheet with information about counseling and support services that are available for adopted persons and birth parents.

- 6** **Which services are for fee.** Amends §144.226, subd. 1. Adds paragraph (g) permitting the department to charge an \$18 fee for noncertified copies of birth records to adopted persons age 19 or older.
- 7** **Request.** Amends § 259.89, subdivision 1. Strikes language that requires the commissioner of health to notify the commissioner of human services when an adopted person requests disclosure of information on the birth record.
- 8** **Rights of terminated parent.** Amends § 260C.317, subdivision 4. Changes a cross reference to proposed coding in this bill.
- 9** **Adoption agencies; fee.** Permits adoption agencies to charge a fee for counseling and support services provided to adopted persons and birth parents.
- 10** **Repealer.** Repeals section 259.83, subdivision 3 (related to access of information on the original birth records); section 259.89, subdivision 2 (search by the commissioner of human services for the birth parents); subdivision 3 (related to access of birth record if the commissioner cannot locate the birth parents); subdivision 4 (release of birth record information after notice to the birth parents); and subdivision 5 (release of birth record information if the birth parents is deceased).
- 11** **Effective date.** Provides an effective date of July 1, 2009.