

**CHAPTER 281—H.F.No. 3391**

*An act relating to children; modifying provisions relating to children in need of protection or services; amending Minnesota Statutes 2008, sections 260C.007, subdivision 6; 260C.163, subdivision 2; Minnesota Statutes 2009 Supplement, section 260C.175, subdivision 1.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 260C.007, subdivision 6, is amended to read:

Subd. 6. **Child in need of protection or services.** "Child in need of protection or services" means a child who is in need of protection or services because the child:

(1) is abandoned or without parent, guardian, or custodian;

(2)(i) has been a victim of physical or sexual abuse as defined in section 626.556, subdivision 2, (ii) resides with or has resided with a victim of child abuse as defined in subdivision 5 or domestic child abuse as defined in subdivision 13, (iii) resides with or would reside with a perpetrator of domestic child abuse as defined in subdivision 13 or child abuse as defined in subdivision 5 or 13, or (iv) is a victim of emotional maltreatment as defined in subdivision 15;

(3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;

(4) is without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care;

(5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane;

(6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody, including a child who entered foster care under a voluntary placement agreement between the parent and the responsible social services agency under section 260C.212, subdivision 8;

(7) has been placed for adoption or care in violation of law;

(8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian;

(9) is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child's home;

(10) is experiencing growth delays, which may be referred to as failure to thrive, that have been diagnosed by a physician and are due to parental neglect;

(11) has engaged in prostitution as defined in section 609.321, subdivision 9;

(12) has committed a delinquent act or a juvenile petty offense before becoming ten years old;

(13) is a runaway;

(14) is a habitual truant; ~~or~~

(15) has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency in connection with a delinquency proceeding, a certification under section 260B.125, an extended jurisdiction juvenile prosecution, or a proceeding involving a juvenile petty offense; or

(16) has a parent whose parental rights to one or more other children were involuntarily terminated or whose custodial rights to another child have been involuntarily transferred to a relative and there is a case plan prepared by the responsible social services agency documenting a compelling reason why filing the termination of parental rights petition under section 260C.301, subdivision 3, is not in the best interests of the child.

Sec. 2. Minnesota Statutes 2008, section 260C.163, subdivision 2, is amended to read:

Subd. 2. **Right to participate in proceedings.** A child who is the subject of a petition, and the parents, guardian, or legal custodian of the child have the right to participate in all proceedings on a petition. Official tribal representatives have the right to participate in any proceeding that is subject to the Indian Child Welfare Act of 1978, United States Code, title 25, sections 1901 to 1963.

Any grandparent of the child has a right to participate in the proceedings to the same extent as a parent, if the child has lived with the grandparent within the two years preceding the filing of the petition. At the first hearing following the filing of a petition, the court shall ask whether the child has lived with a grandparent within the last two years, except that the court need not make this inquiry if the petition states that the child did not live with a grandparent during this time period. Failure to notify a grandparent of the proceedings is not a jurisdictional defect.

If, in a permanency proceeding involving a child in need of protection or services, the responsible social services agency recommends any party files a petition for transfer of permanent legal and physical custody to a named relative, the relative has a right to participate in the permanency proceeding as a party on the issues of the relative's suitability to be a legal and physical custodian for the child, whether the transfer is in the child's best interests, and the needs of the child. Thereafter the named relative shall receive notice of any hearing in the proceedings.

Sec. 3. Minnesota Statutes 2009 Supplement, section 260C.175, subdivision 1, is amended to read:

Subdivision 1. **Immediate custody.** No child may be taken into immediate custody except:

(1) with an order issued by the court in accordance with the provisions of section 260C.151, subdivision 6, or Laws 1997, chapter 239, article 10, section 10, paragraph (a), clause (3), or 12, paragraph (a), clause (3), or by a warrant issued in accordance with the provisions of section 260C.154;

(2) by a peace officer:

(i) when a child has run away from a parent, guardian, or custodian, or when the peace officer reasonably believes the child has run away from a parent, guardian, or custodian, but only for the purpose of transporting the child home, to the home of a relative, or to another safe place, which may include a shelter care facility; or

(ii) when a child is found in surroundings or conditions which endanger the child's health or welfare or which such peace officer reasonably believes will endanger the child's health or welfare. If an Indian child is a resident of a reservation or is domiciled on a reservation but temporarily located off the reservation, the taking of the child into custody under this clause shall be consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1922;

(3) by a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision; or

(4) by a peace officer or probation officer under section 260C.143, subdivision 1 or 4.

Presented to the governor April 22, 2010

Signed by the governor April 26, 2010, 5:15 p.m.