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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 3973

03/19/2018 Authored by Moran and Slocum
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to human services; establishing the Minnesota African American Family
1.3 Preservation Act; creating an African American Child Welfare Oversight Council;
1.4 appropriating money; proposing coding for new law in Minnesota Statutes, chapter
1.5 260.

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

1.7 Section 1. [260.61] CITATIONS.

1.8 Sections 260.61 to 260.68 may be cited as the "Minnesota African American Family
1.9 Preservation Act."

1.10 Sec. 2. [260.62] PURPOSES.

1.11 The purposes of the Minnesota African American Family Preservation Act are to (1)
1.12 protect the best interests of African American children, and (2) promote the stability and
1.13 security of African American families by establishing minimum standards to prevent arbitrary
1.14 and unnecessary removal of African American children from their families.

1.15 Sec. 3. [260.63] DEFINITIONS.

1.16 Subdivision 1. Scope. The definitions in this section apply to sections 260.61 to 260.68.

1.17 Subd. 2. Active efforts. "Active efforts" means a rigorous and concerted level of effort
1.18 that is ongoing throughout the involvement of the local social services agency, to
1.19 continuously use culturally appropriate services to preserve the African American child's
1.20 family and prevent out-of-home placement of an African American child and, if placement
1.21 occurs, to return the African American child to the child's family at the earliest possible
1.22 time that return is safe. Active efforts sets a higher standard than reasonable efforts to

2.1 preserve the family, prevent breakup of the family, and reunify the family. Active efforts
2.2 includes reasonable efforts as required by Title IV-E of the Social Security Act, United
2.3 States Code, title 42, sections 670 to 679c.

2.4 Subd. 3. **African American child.** "African American child" is a child of African descent
2.5 or heritage, including a child of two or more races who has at least one parent of African
2.6 descent or heritage.

2.7 Subd. 4. **Best interests of the African American child.** "Best interests of the African
2.8 American child" means compliance with the Minnesota African American Family
2.9 Preservation Act and other applicable state and federal child protection laws, to protect an
2.10 African American child from harm, and to preserve and maintain an African American
2.11 child's family. The best interests of an African American child support the child's sense of
2.12 belonging to family, extended family, and culture.

2.13 Subd. 5. **Child placement proceeding.** (a) "Child placement proceeding" includes a
2.14 judicial proceeding which could have a result described in paragraphs (b) to (e).

2.15 (b) "Adoptive placement" means the permanent placement of an African American child
2.16 for adoption, including an action resulting in a final decree of adoption.

2.17 (c) "Involuntary foster care placement" means an action removing an African American
2.18 child from the child's parents or persons who have legal custody for temporary placement
2.19 in a foster home, shelter care, or the home of a guardian, where the parent or person who
2.20 has legal custody cannot have the child returned upon demand, but parental rights have not
2.21 been terminated.

2.22 (d) "Preadoptive placement" means the temporary placement of an African American
2.23 child in a foster home or institution after the termination of parental rights, before or instead
2.24 of adoptive placement.

2.25 (e) "Termination of parental rights" means an action resulting in the termination of the
2.26 parent-child relationship under section 260C.301.

2.27 (f) The terms in this subdivision include a placement based upon a juvenile status offense,
2.28 but do not include a placement based upon (1) an act which if committed by an adult would
2.29 be deemed a crime, or (2) an award of custody in a divorce proceeding to one of the parents.

2.30 Subd. 6. **Commissioner.** "Commissioner" means the commissioner of human services.

2.31 Subd. 7. **Family-based services.** "Family-based services" means intensive
2.32 family-centered services to a family primarily in the family's own home and for a limited
2.33 time.

3.1 Subd. 8. **Local social services agency.** "Local social services agency" means the local
3.2 agency under the authority of the county welfare or human services board or county board
3.3 of commissioners which is responsible for human services and child protection.

3.4 Subd. 9. **Parent.** "Parent" means the biological parent of an African American child or
3.5 any person who has lawfully adopted an African American child. Parent does not include
3.6 an unmarried father whose paternity has not been acknowledged or established. Paternity
3.7 has been acknowledged when an unmarried father takes any action to hold himself out as
3.8 the biological father of a child.

3.9 Subd. 10. **Relative.** "Relative" means a person related to the child by blood, marriage,
3.10 or adoption, or an individual who is an important friend with whom the child has resided
3.11 or had significant contact.

3.12 Subd. 11. **Sexual abuse.** "Sexual abuse" has the meaning given in section 626.556,
3.13 subdivision 2, paragraph (n).

3.14 Subd. 12. **Substantial child endangerment.** "Substantial child endangerment" has the
3.15 meaning given in section 626.556, subdivision 2, paragraph (o).

3.16 **Sec. 4. [260.64] DUTY TO PREVENT OUT-OF-HOME PLACEMENT AND**
3.17 **PROMOTE FAMILY REUNIFICATION.**

3.18 (a) A local social services agency shall make active efforts to prevent out-of-home
3.19 placement of an African American child, eliminate the need for a child's removal from the
3.20 home, and reunify a child and family as soon as practicable.

3.21 (b) A court shall not order an out-of-home or permanency placement for an African
3.22 American child alleged to be in need of protective services unless the court finds that the
3.23 local social services agency made active efforts to preserve the African American child's
3.24 family. In determining whether the local social services agency made active efforts for
3.25 purposes of out-of-home placement and permanency, the court shall make findings regarding
3.26 whether the local social services agency made appropriate and meaningful family-based
3.27 services available to the family based upon that family's specific needs. If a court determines
3.28 that the local social services agency did not make active efforts as required under this section,
3.29 the court shall order the local social services agency to immediately provide appropriate
3.30 and meaningful family-based services.

4.1 **Sec. 5. [260.65] TEMPORARY OUT-OF-HOME PLACEMENT.**

4.2 (a) Prior to an African American child's placement in foster care, the responsible local
4.3 social services agency must make active efforts to identify and locate the child's relatives
4.4 and the noncustodial or nonadjudicated parent and notify them of the need for a foster home
4.5 for the child. The agency must also inform the relatives and noncustodial or nonadjudicated
4.6 parent of the option to become a placement resource for the child and the possibility that
4.7 the child will need a permanent placement. If prior notice is not practicable, the agency
4.8 must notify identified relatives and the noncustodial or nonadjudicated parent of the need
4.9 for a foster home for the child within 48 hours of a child's removal from the custodial parent's
4.10 care. The local social services agency must keep detailed records of its efforts to notify
4.11 parents and relatives under this section.

4.12 (b) Notwithstanding the provisions of section 260C.219, if a noncustodial or
4.13 nonadjudicated parent is willing to and capable of providing for the day-to-day care of the
4.14 African American child temporarily or permanently, the local social services agency shall
4.15 temporarily place the child with the noncustodial or nonadjudicated parent. Prior to initial
4.16 placement with a noncustodial or nonadjudicated parent, the local social services agency
4.17 must conduct an immediate assessment of the parent's ability to care for the child.

4.18 (c) If a noncustodial or nonadjudicated parent is unwilling to or incapable of caring for
4.19 the child, and the local social services agency has determined that continued placement of
4.20 the child into the home of either parent would endanger the child's health, safety, or welfare,
4.21 the local social services agency shall comply with the custodial parent or legal custodian's
4.22 request to temporarily place the child with a selected relative. Prior to initial placement with
4.23 the relative, the local social services agency must conduct an assessment of the relative's
4.24 ability to care for the child.

4.25 (d) If, after conducting an assessment, the local social services agency determines that
4.26 the child cannot be placed with the relative or the noncustodial or nonadjudicated parent,
4.27 the local social services agency must provide specific findings of fact, in writing, explaining
4.28 why the placement is not possible.

4.29 **Sec. 6. [260.66] TERMINATION OF PARENTAL RIGHTS; CHILD PLACEMENT**
4.30 **PROCEEDINGS.**

4.31 Subdivision 1. **Termination of parental rights not permitted.** (a) A court shall not
4.32 terminate the parental rights of an African American parent based solely on that parent's
4.33 failure to complete case plan requirements.

5.1 (b) A court shall not terminate the parental rights of an African American parent in child
5.2 placement proceedings that do not involve alleged: sexual abuse; egregious harm as defined
5.3 in section 260C.007, subdivision 14; murder in the first, second, or third degree under section
5.4 609.185, 609.19, or 609.195; manslaughter in the first or second degree under section 609.20
5.5 or 609.205; assault in the first, second, or third degree under section 609.221, 609.222, or
5.6 609.223; solicitation, inducement, and promotion of prostitution under section 609.322;
5.7 criminal sexual conduct under sections 609.342 to 609.3451; solicitation of children to
5.8 engage in sexual conduct under section 609.352; malicious punishment or neglect or
5.9 endangerment of a child under section 609.377 or 609.378; use of a minor in sexual
5.10 performance under section 617.246; or failing to protect a child from an overt act or condition
5.11 that constitutes egregious harm. The court shall, if possible, transfer permanent legal and
5.12 physical custody to a fit and willing relative or third party, if the court determines that there
5.13 is continued need for out-of-home placement of the child.

5.14 Subd. 2. **Appeals.** Notwithstanding the provisions of Minnesota Rules of Juvenile
5.15 Protection Procedure Rule 47.02, subdivision 2, an African American parent whose parental
5.16 rights have been terminated may appeal the decision within 120 days of the service of notice
5.17 by the court administrator of the filing of the court's order.

5.18 Subd. 3. **Family reunification.** (a) The provisions of section 260C.329, subdivisions 3,
5.19 5, and 8, shall not apply to African American families.

5.20 (b) An African American parent, an African American child who is ten years of age or
5.21 older, a local social services agency, or a guardian ad litem may file a petition for the
5.22 reestablishment of the legal parent and child relationship. A petition for reestablishment of
5.23 the legal parent and child relationship may be filed regardless of the age of the child or how
5.24 long the child has been in foster care. An African American parent filing a petition or who
5.25 is the subject of a petition under this subdivision has the right to be represented by counsel.
5.26 Notwithstanding section 260C.329, subdivision 10, the court shall appoint a qualified
5.27 attorney to represent the African American parent if the parent meets the eligibility
5.28 requirements under section 611.17.

5.29 (c) The court may grant the petition ordering the reestablishment of the legal parent and
5.30 child relationship only if it finds by clear and convincing evidence that:

5.31 (1) reestablishment of the legal parent and child relationship is in the best interests of
5.32 the African American child;

5.33 (2) the child has not been adopted;

6.1 (3) the parent has corrected the conditions that led to an order terminating parental rights;
6.2 and

6.3 (4) the parent is willing and has the capability to provide day-to-day care and maintain
6.4 the health, safety, and welfare of the child.

6.5 **Sec. 7. [260.67] LOCAL WELFARE AGENCY CONDUCT.**

6.6 (a) A local social services agency employee who has duties related to child protection
6.7 shall not knowingly:

6.8 (1) make untrue statements about any case involving a child alleged to be in need of
6.9 protection or services;

6.10 (2) withhold any information that may be material to a case involving a child alleged to
6.11 be in need of protection or services; or

6.12 (3) fabricate or falsify any documentation or evidence relating to a case involving a child
6.13 alleged to be in need of protection or services.

6.14 (b) A local social services agency employee who has duties related to child protection
6.15 who commits any of the acts in paragraph (a) shall be guilty of a felony and may be sentenced
6.16 to imprisonment for not more than two years or to payment of a fine of not more than \$4,000,
6.17 or both.

6.18 (c) When a local social services agency screens in a report alleging maltreatment of an
6.19 African American child or places a child in an involuntary out-of-home placement, the
6.20 agency shall, within seven days after screening in the report or initiating the out-of-home
6.21 placement, notify the African American Child Well-Being Department of the report or
6.22 placement and of the steps taken to investigate and remedy the conditions that led to the
6.23 report or placement. At all stages of a case involving an African American child, the local
6.24 social services agency shall, upon request, fully cooperate with the African American Child
6.25 Well-Being Department and the African American Child Welfare Oversight Council, and
6.26 provide access to all relevant case files.

6.27 (d) In any involuntary adoptive or preadoptive placement proceeding involving an
6.28 African American child, the local social services agency shall notify the African American
6.29 Child Well-Being Department by registered mail with return receipt requested of the pending
6.30 proceeding and of the right of intervention. No preadoptive or adoptive placement proceeding
6.31 may be held until at least 30 days after receipt of the notice by the African American Child
6.32 Well-Being Department. Upon request, the African American Child Well-Being Department
6.33 must be granted up to 30 additional days to prepare for the proceeding. The agency or

7.1 notifying party shall include in the notice the identity of the birth parents and child. In cases
 7.2 where an agency or party to an adoptive placement knows or has reason to believe that a
 7.3 child is or may be an African American child, proof of service upon the African American
 7.4 Child Well-Being Department must be filed with the adoption petition.

7.5 (e) Any local social services agency that is found to be out of compliance with the
 7.6 provisions of this chapter will be subject to a fine, to be determined by the commissioner.

7.7 **Sec. 8. [260.68] AFRICAN AMERICAN CHILD WELFARE OVERSIGHT**
 7.8 **COUNCIL.**

7.9 Subdivision 1. **Creation.** (a) The commissioner shall appoint an African American Child
 7.10 Welfare Oversight Council to help formulate policies and procedures relating to African
 7.11 American child welfare services, to ensure that African American families are provided
 7.12 with all possible services and opportunities to care for their children in their homes.

7.13 (b) The terms, compensation, and removal of African American Child Welfare Oversight
 7.14 Council members shall be as provided in section 15.059, except that members shall be
 7.15 compensated at the rate of \$100 a day spent on council activities. The advisory council does
 7.16 not expire.

7.17 Subd. 2. **Membership.** The council shall consist of 15 African American members
 7.18 appointed by the commissioner and must include child welfare policy and social work
 7.19 professionals and paraprofessionals, community members, community leaders, and African
 7.20 American parents representing all regions of the state.

7.21 Subd. 3. **Meeting.** The council shall meet at least eight times per year, but may meet
 7.22 more frequently at the call of the chair, a majority of the council members, or the
 7.23 commissioner.

7.24 Subd. 4. **Duties.** The African American Child Welfare Oversight Council shall:

7.25 (1) monitor the number of African American children in out-of-home placement and
 7.26 collect and distribute data on African American children in out-of-home placement;

7.27 (2) monitor and review case plans and services offered by local social services agencies
 7.28 and interview local social services agency child welfare staff to ensure that case plans and
 7.29 services address the unique needs of each African American family and comply with the
 7.30 provisions of the Minnesota African American Family Preservation Act;

8.1 (3) partner with the African American Child Well-Being Department to screen shelter
8.2 and foster care settings to ensure that African American children are receiving appropriate
8.3 and adequate care;

8.4 (4) develop and promote public policies and child protection laws that specifically
8.5 consider the needs of African American children and families;

8.6 (5) coordinate stakeholder and agency efforts to improve child welfare outcomes for
8.7 African American children and families;

8.8 (6) initiate a public awareness campaign on the issue of racial disparities in out-of-home
8.9 placement of children;

8.10 (7) partner with the African American Child Well-Being Department to coordinate
8.11 services and create partnerships to provide housing assistance, employment assistance, and
8.12 education support and training for African American children and families; and

8.13 (8) partner with the commissioner and local welfare agencies to ensure that the number
8.14 of African American employees is proportionate to the number of African American families
8.15 served in each county.

8.16 Subd. 5. **Data considerations for case review.** (a) Members of the African American
8.17 Child Welfare Oversight Council have access to the following data for specific case review
8.18 under subdivision 4:

8.19 (1) police investigative data;

8.20 (2) autopsy records and coroner or medical examiner investigative data;

8.21 (3) hospital, public health, or other medical records of the African American child;

8.22 (4) hospital and other medical records of the African American child's parent that relate
8.23 to prenatal care;

8.24 (5) records created by social service agencies that provided services to the African
8.25 American child or family; and

8.26 (6) personnel data related to an employee's performance in discharging child protection
8.27 responsibilities.

8.28 A state agency, statewide system, or political subdivision shall provide the data upon request
8.29 of the commissioner. Not public data may be shared with members of the council in
8.30 connection with an individual case.

9.1 (b) Notwithstanding the data's classification in the possession of any other agency, data
9.2 acquired by the African American Child Welfare Oversight Council in the exercise of its
9.3 duties are protected nonpublic or confidential data as defined in section 13.02, but may be
9.4 disclosed as necessary to carry out the purposes of the council. The data are not subject to
9.5 subpoena or discovery. The commissioner may disclose conclusions of the council, but may
9.6 not disclose data on individuals that were classified as confidential or private data on
9.7 individuals in the possession of the state agency, statewide system, or political subdivision
9.8 from which the data were received, except that the commissioner may disclose local social
9.9 service agency data as provided in section 626.556, subdivision 11d, on individual cases
9.10 involving a fatality or near fatality of a person served by the local social service agency
9.11 prior to the date of death.

9.12 (c) A person attending an African American Child Welfare Oversight Council meeting
9.13 may not disclose what transpired at the meeting, except to carry out the purposes of the
9.14 council. The proceedings and records of the council are protected nonpublic data as defined
9.15 in section 13.02, subdivision 13, and are not subject to discovery or introduction into evidence
9.16 in a civil or criminal action against a professional, the state, or county agency arising out
9.17 of the matters the panel is reviewing. Information, documents, and records otherwise available
9.18 from other sources are not immune from discovery or use in a civil or criminal action solely
9.19 because they were presented during proceedings of the council. A person who presented
9.20 information before the council or who is a member of the council is not prevented from
9.21 testifying about matters within the person's knowledge. However, in a civil or criminal
9.22 proceeding, a person must not be questioned about the person's presentation of information
9.23 to the council or opinions formed by the person as a result of the council meetings.

9.24 Subd. 6. **Annual report.** By January 1 of each year, beginning January 1, 2019, the
9.25 advisory council shall report to the chairs and ranking minority members of the legislative
9.26 committees with jurisdiction over child protection on the council's activities under subdivision
9.27 4 and other issues on which the council may choose to report.

9.28 Sec. 9. **[260.69] AFRICAN AMERICAN CHILD WELL-BEING DEPARTMENT.**

9.29 Subdivision 1. **Creation; administration.** (a) The African American Child Well-Being
9.30 Department is created in the Department of Human Services. The office shall be headed by
9.31 a director appointed by the commissioner of human services.

9.32 (b) The commissioner of human services shall provide the African American Child
9.33 Well-Being Department with office space, administrative services, and secretarial and
9.34 clerical assistance.

10.1 Subd. 2. Staff. (a) The director may appoint a deputy director, one personal secretary,
10.2 and two additional full-time employees to discharge the responsibilities of the office. Any
10.3 deputy director or personal secretary and all other employees of the office shall be of African
10.4 American heritage and shall be classified full-time employees of the commissioner of human
10.5 services.

10.6 (b) The director shall attempt to appoint staff persons with expertise in areas such as
10.7 law, health care, social work, psychology and mental health, sociology, child care, and
10.8 education as they apply to child protection and disparities between social, racial, and cultural
10.9 groups.

10.10 Subd. 3. Duties. The African American Child Well-Being Department will receive
10.11 notification of cases involving African American children and shall perform the following
10.12 functions:

10.13 (1) monitor the number of African Americans in out-of-home placement statewide;

10.14 (2) directly oversee, review, and consult on case plans and services offered by local
10.15 social services agencies to ensure that case plans and services address the unique needs of
10.16 each African American family and comply with the Minnesota African American Family
10.17 Preservation Act;

10.18 (3) intervene in an involuntary adoptive or preadoptive placement proceeding involving
10.19 an African American child;

10.20 (4) screen shelter and foster care settings to ensure that African American children are
10.21 receiving appropriate and adequate care; and

10.22 (5) coordinate services and create partnerships to provide housing assistance, employment
10.23 assistance, and education support and training for African American children and families.

10.24 Subd. 4. Reports. (a) The African American Child Well-Being Department shall provide
10.25 a quarterly report outlining its activities to the African American Child Welfare Oversight
10.26 Council.

10.27 (b) The African American Child Well-Being Department, in partnership with the
10.28 commissioner, shall publish an annual census of all African American children residing in
10.29 residential facilities statewide. The census shall include data on the types of facilities, age
10.30 and sex of the children, how long the children have been in out-of-home placements, and
10.31 other relevant demographic information.

11.1 Sec. 10. [260.695] AFRICAN AMERICAN CHILD WELFARE GRANTS.

11.2 Subdivision 1. Primary support grants. The commissioner shall establish direct grants
 11.3 to African American-led organizations, service providers, and programs that serve African
 11.4 American children and their families, to provide primary support for African American
 11.5 child welfare programs to implement the African American Family Preservation Act.

11.6 Subd. 2. Eligible services. (a) Services eligible for grant funds include, but are not
 11.7 limited to:

11.8 (1) placement prevention and reunification services;

11.9 (2) family-based services and reunification therapy;

11.10 (3) culturally specific individual and family counseling;

11.11 (4) court advocacy;

11.12 (5) training and consultation to county and private social services agencies regarding
 11.13 the Minnesota African American Family Preservation Act; and

11.14 (6) other activities and services approved by the commissioner that further the goals of
 11.15 the African American Family Preservation Act, including but not limited to recruitment of
 11.16 African American staff for local social services agencies and licensed child placing agencies.

11.17 (b) The commissioner may specify the priority of an activity and service based on its
 11.18 success in furthering these goals. The commissioner shall give preference to programs that
 11.19 use African American staff, contract with African American-led organizations, or whose
 11.20 application is a joint effort between the African American community and non-African
 11.21 American community to achieve the goals of the Minnesota African American Family
 11.22 Preservation Act. Programs must have input and support from the African American
 11.23 community.

11.24 Subd. 3. Ineligible services. Grant funding may not be used for the following purposes:

11.25 (1) child day care necessary solely because of employment or training for employment
 11.26 of a parent or other relative with whom the child is living;

11.27 (2) foster care maintenance or difficulty of care payments;

11.28 (3) residential facility payments;

11.29 (4) adoption assistance payments;

12.1 (5) public assistance payments for Minnesota family investment program assistance,
12.2 supplemental aid, medical assistance, general assistance, general assistance medical care,
12.3 or community health services; or

12.4 (6) administrative costs for income maintenance staff.

12.5 Subd. 4. **Requests for proposals.** The commissioner shall request proposals for grants
12.6 under subdivisions 1, 2, and 3, and specify the information and criteria required.

12.7 Sec. 11. **APPROPRIATION.**

12.8 \$..... in fiscal year 2019 is appropriated from the general fund to the commissioner of
12.9 human services for the administration of the African American Family Preservation Act
12.10 under Minnesota Statutes, sections 260.61 to 260.695. This is an ongoing appropriation and
12.11 shall be added to the base.