

Senate Counsel & Research

G-17 STATE CAPITOL
REV. DR. MARTIN LUTHER KING JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX (651) 296-7747

JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

COUNSEL

PETER S. WATTSON
JOHN C. FULLER
BONNIE L. BEREZOVSKY
DANIEL P. MCGOWAN
KATHLEEN E. PONTIUS
PATRICIA A. LIEN
KATHERINE T. CAVANOR
CHRISTOPHER B. STANG
KENNETH P. BACKHUS
CAROL E. BAKER
JOAN E. WHITE
THOMAS S. BOTTERN
ANN MARIE BUTLER

LEGISLATIVE

CLYDE GIEL
GREGORY C. KNOPFF
MATTHEW GROSSER
DANIEL L. MUELLER
JACK PAULSON
CHRIS L. TURNER
M. VENNEWITZ
KARA WEIDMANN

S.F. No. 644 - Removal of a Child from Minnesota

Author: Senator Don Betzold

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: February 10, 2005

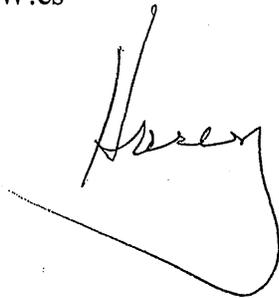
S.F. No. 644 changes procedures for the removal from the state of the children of a dissolved marriage or separated parents.

Section 1 allows parents, in a parenting plan, to choose the legal standard that will govern decisions about removal.

Section 2 requires the court, in considering a removal, to apply a best interests standard, including, but not limited to, extensive statutory criteria.

Section 3 provides that the court shall not modify a custody order if the primary custodial parent has moved to another state after a petition to remove a child has been denied.

HW:cs



Senators Betzold, Rest and Neuville introduced--

S.F. No. 751: Referred to the Committee on Judiciary.

1 A bill for an act

2 relating to paternity; changing certain presumptions;
3 amending Minnesota Statutes 2004, sections 257.55,
4 subdivision 1; 257.57, subdivision 2; 257.62,
5 subdivision 5.

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

7 Section 1. Minnesota Statutes 2004, section 257.55,
8 subdivision 1, is amended to read:

9 Subdivision 1. [PRESUMPTION.] A man is presumed to be the
10 biological father of a child if:

11 (a) He and the child's biological mother are or have been
12 married to each other and the child is born during the marriage,
13 or within 280 days after the marriage is terminated by death,
14 annulment, declaration of invalidity, dissolution, or divorce,
15 or after a decree of legal separation is entered by a court.

16 The presumption in this paragraph does not apply if the man has
17 joined in a recognition of parentage recognizing another man as
18 the biological father under section 257.75, subdivision 1a;

19 (b) Before the child's birth, he and the child's biological
20 mother have attempted to marry each other by a marriage
21 solemnized in apparent compliance with law, although the
22 attempted marriage is or could be declared void, voidable, or
23 otherwise invalid, and,

24 (1) if the attempted marriage could be declared invalid
25 only by a court, the child is born during the attempted

1 marriage, or within 280 days after its termination by death,
2 annulment, declaration of invalidity, dissolution or divorce; or

3 (2) if the attempted marriage is invalid without a court
4 order, the child is born within 280 days after the termination
5 of cohabitation;

6 (c) After the child's birth, he and the child's biological
7 mother have married, or attempted to marry, each other by a
8 marriage solemnized in apparent compliance with law, although
9 the attempted marriage is or could be declared void, voidable,
10 or otherwise invalid, and,

11 (1) he has acknowledged his paternity of the child in
12 writing filed with the state registrar of vital statistics;

13 (2) with his consent, he is named as the child's father on
14 the child's birth record; or

15 (3) he is obligated to support the child under a written
16 voluntary promise or by court order;

17 ~~(d) While the child is under the age of majority, he~~
18 ~~receives the child into his home~~ During the first two years of
19 the child's life, he resided in the same household with the
20 child for at least 12 months and openly holds held out the child
21 as his biological child own;

22 (e) He and the child's biological mother acknowledge his
23 paternity of the child in a writing signed by both of them under
24 section 257.34 and filed with the state registrar of vital
25 statistics. If another man is presumed under this paragraph to
26 be the child's father, acknowledgment may be effected only with
27 the written consent of the presumed father or after the
28 presumption has been rebutted;

29 ~~(f) Evidence of statistical probability of paternity based~~
30 ~~on blood or genetic testing establishes the likelihood that he~~
31 ~~is the father of the child, calculated with a prior probability~~
32 ~~of no more than 0.5 (50 percent), is 99 percent or greater;~~

33 (g) He and the child's biological mother have executed a
34 recognition of parentage in accordance with section 257.75 and
35 another man is presumed to be the father under this subdivision;

36 (h) (g) He and the child's biological mother have executed

1 a recognition of parentage in accordance with section 257.75 and
 2 another man and the child's mother have executed a recognition
 3 of parentage in accordance with section 257.75; or

4 ~~(f)~~ (h) He and the child's biological mother executed a
 5 recognition of parentage in accordance with section 257.75 when
 6 either or both of the signatories were less than 18 years of age.

7 Sec. 2. Minnesota Statutes 2004, section 257.57,
 8 subdivision 2, is amended to read:

9 Subd. 2. [ACTIONS UNDER OTHER PARAGRAPHS OF SECTION
 10 257.55, SUBDIVISION 1.] The child, the mother, or personal
 11 representative of the child, the public authority chargeable by
 12 law with the support of the child, the personal representative
 13 or a parent of the mother if the mother has died or is a minor,
 14 a man alleged or alleging himself to be the father, or the
 15 personal representative or a parent of the alleged father if the
 16 alleged father has died or is a minor may bring an action:

17 (1) at any time for the purpose of declaring the existence
 18 of the father and child relationship presumed under section
 19 sections 257.55, subdivision 1, paragraph (d), (e), ~~(f)~~, (g), or
 20 (h), and 257.62, subdivision 5, paragraph (b), or the
 21 nonexistence of the father and child relationship presumed under
 22 section 257.55, subdivision 1, clause (d) of that subdivision;

23 (2) for the purpose of declaring the nonexistence of the
 24 father and child relationship presumed under section 257.55,
 25 subdivision 1, paragraph (e) or (g), only if the action is
 26 brought within six months after the person bringing the action
 27 obtains the results of blood or genetic tests that indicate that
 28 the presumed father is not the father of the child;

29 (3) for the purpose of declaring the nonexistence of the
 30 father and child relationship presumed under section ~~257.55~~
 31 ~~subdivision 1, paragraph (f)~~ 257.62, subdivision 5, paragraph
 32 (b), only if the action is brought within three years after the
 33 party bringing the action, or the party's attorney of record,
 34 has been provided the blood or genetic test results; or

35 (4) for the purpose of declaring the nonexistence of the
 36 father and child relationship presumed under section 257.75,

1 subdivision 9, only if the action is brought by the minor
2 signatory within six months after the minor signatory reaches
3 the age of 18. In the case of a recognition of parentage
4 executed by two minor signatories, the action to declare the
5 nonexistence of the father and child relationship must be
6 brought within six months after the youngest signatory reaches
7 the age of 18.

8 Sec. 3. Minnesota Statutes 2004, section 257.62,
9 subdivision 5, is amended to read:

10 Subd. 5. [POSITIVE TEST RESULTS.] (a) If the results of
11 blood or genetic tests completed in a laboratory accredited by
12 the American Association of Blood Banks indicate that the
13 likelihood of the alleged father's paternity, calculated with a
14 prior probability of no more than 0.5 (50 percent), is 92
15 percent or greater, upon motion the court shall order the
16 alleged father to pay temporary child support determined
17 according to chapter 518. The alleged father shall pay the
18 support money to the public authority if the public authority is
19 a party and is providing services to the parties or, if not,
20 into court pursuant to the Rules of Civil Procedure to await the
21 results of the paternity proceedings.

22 (b) If the results of blood or genetic tests completed in a
23 laboratory accredited by the American Association of Blood Banks
24 indicate that likelihood of the alleged father's paternity,
25 calculated with a prior probability of no more than 0.5 (50
26 percent), is 99 percent or greater, there is an evidentiary
27 presumption that the alleged father is ~~presumed-to-be~~ the parent
28 and the party opposing the establishment of the alleged father's
29 paternity has the burden of proving by clear and convincing
30 evidence that the alleged father is not the father of the child.

01/25/05

[REVISOR] CEL/JK 05-1997

1 determination. The court's order denying the suspension of
2 child support must include a written explanation of the reasons
3 why continuation of the child support obligation would be in the
4 best interests of the child.

1 Senator moves to amend S.F. No. 644 as follows:

2 Page 3, line 1, delete everything after "finds" and insert "
3 that the person requesting permission to move has been a victim
4 of domestic abuse by the other parent,"

1 Senator moves to amend S.F. No. 644 as follows:

2 Page 1, line 25, after "decree" insert ", is exercising the
3 parenting time, and the parenting time would be materially
4 affected by the move"

While it is preferable that children live in the same community as both of their parents, the reality is that this ideal cannot always be met. A substantial number of relationships in this country end in separation or divorce. A substantial number of children are born to single mothers. Compounded with the increasing mobility of families, the generally poorer economic status of women and children in our society makes it unrealistic to require custodial families to remain in the same location throughout a child's minority, especially if such confinement is at significant cost to the custodial family's ability to start a new and potentially improved life.

Auge established a framework for resolving relocation issues which accommodates both the custodial family's need to move on and move forward in life and the noncustodial parent's interest in maintaining meaningful contact with the child.

"Custodial parents in Minnesota are presumptively entitled to remove their children to another state unless the party opposing removal establishes, by a preponderance of the evidence, that the move is not in the best interests of the children or is sought for the purpose of interfering with visitation. Central to this reasoning is that the custodial parent and the children are a new family unit. What is best for the children is considered in the context of what is best for this new family. Decisions concerning the welfare of the child are thought to be best left to the custodial parent who, because of his or her day-to-day relationship with the child, is best suited to judge the child's needs. The courts thus take the view that the custodial parent's decision about where the family unit will live should be second-guessed only where it would present a "clear danger to the child's well-being." Janet M. Bowermaster, University of Kansas Law Review, April, 1998. (46 U.Kan.L.Rev.433)

Dismantling Minnesota's framework is not in "the best interests of children" and I urge you to vote against S. F. 644.

Mary Louise Klas, 651-291-1543

Talking Points – Removal – S. F. 644 2/17/05

- **After divorce and/or separation, economic realities make relocation a necessity for a majority of women and their children:**
 - **Custodial mothers are three times more likely than custodial fathers to be poor;**
 - **Cumulative effect of wage disparity between women and men: men can expect to earn anywhere from \$350,000 to \$2 million more than their female counterparts over an entire work life;**

- **Ignoring the importance of relocation to the well-being of custodial families imperils the well-being of children:**
 - **The best interests of the child necessarily include what is in best interests of the custodial family.**
 - **Minnesota law presumes that a custodial parent's good-faith decision to relocate is in the best interests of the child.**
 - **Because of the emphasis Minnesota has long placed on the stability of the child's situation, the showing required to overcome that presumption is substantial.**

- **A comprehensive multi-disciplinary review of large scale national research confirmed that because children's welfare strongly depends on the financial and emotional well-being of the custodial parent and data do not establish a comparable link between visitation and the child's well-being, support for the custodial unit takes precedence over maintaining any particular pattern of visitation with the noncustodial parent.**
 - **The policy implications of this research are beginning to be recognized in the legal arena. Courts are beginning to back away from the untoward solicitude for fathers' rights that has characterized many relocation custody cases in the past. A distinct trend has emerged in recent state supreme court decisions towards more protection for the custodial family unit. Examples:**

<u>Ireland v. Ireland</u>	Conn. 1996
<u>Baures v. Lewis</u>	N. J. 2001
<u>Fortin v. Fortin</u>	S. D. 1993
<u>In re Marriage of Francis</u>	Colo. 1996
<u>In re Matter of Custody of DMG</u>	Mont. 1998
<u>Elder v. Elder</u>	Tenn. 2001

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CHRISTOPHER L. TURNER
MICHAEL M. VENNEWITZ
MAJA WEIDMANN

S.F. No. 751 - Paternity Presumptions

Author: Senator Don Betzold

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

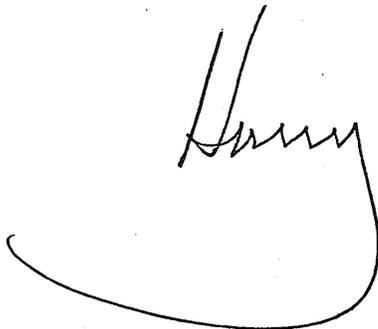
Date: February 11, 2005

S.F. No. 751 amends some paternity presumptions in the Parentage Act.

Section 1 substitutes residence in the same household during the first two years of life for reception into the home during minority. **Section 1** also removes blood or genetic testing from the general list of presumptions.

Section 2 adds a reference to **section 257.62**, the blood and genetic testing law, to the language that provides a schedule for actions to prove parentage.

HW:cs



Senators Betzold, Rest and Neuville introduced--

S.F. No. 751: Referred to the Committee on Judiciary.

1 A bill for an act

2 relating to paternity; changing certain presumptions;
3 amending Minnesota Statutes 2004, sections 257.55,
4 subdivision 1; 257.57, subdivision 2; 257.62,
5 subdivision 5.

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

7 Section 1. Minnesota Statutes 2004, section 257.55,
8 subdivision 1, is amended to read:

9 Subdivision 1. [PRESUMPTION.] A man is presumed to be the
10 biological father of a child if:

11 (a) He and the child's biological mother are or have been
12 married to each other and the child is born during the marriage,
13 or within 280 days after the marriage is terminated by death,
14 annulment, declaration of invalidity, dissolution, or divorce,
15 or after a decree of legal separation is entered by a court.

16 The presumption in this paragraph does not apply if the man has
17 joined in a recognition of parentage recognizing another man as
18 the biological father under section 257.75, subdivision 1a;

19 (b) Before the child's birth, he and the child's biological
20 mother have attempted to marry each other by a marriage
21 solemnized in apparent compliance with law, although the
22 attempted marriage is or could be declared void, voidable, or
23 otherwise invalid, and,

24 (1) if the attempted marriage could be declared invalid
25 only by a court, the child is born during the attempted

1 marriage, or within 280 days after its termination by death,
2 annulment, declaration of invalidity, dissolution or divorce; or

3 (2) if the attempted marriage is invalid without a court
4 order, the child is born within 280 days after the termination
5 of cohabitation;

6 (c) After the child's birth, he and the child's biological
7 mother have married, or attempted to marry, each other by a
8 marriage solemnized in apparent compliance with law, although
9 the attempted marriage is or could be declared void, voidable,
10 or otherwise invalid, and,

11 (1) he has acknowledged his paternity of the child in
12 writing filed with the state registrar of vital statistics;

13 (2) with his consent, he is named as the child's father on
14 the child's birth record; or

15 (3) he is obligated to support the child under a written
16 voluntary promise or by court order;

17 ~~(d) While the child is under the age of majority, he~~
18 ~~receives the child into his home~~ During the first two years of
19 the child's life, he resided in the same household with the
20 child for at least 12 months and openly holds held out the child
21 as his biological child own;

22 (e) He and the child's biological mother acknowledge his
23 paternity of the child in a writing signed by both of them under
24 section 257.34 and filed with the state registrar of vital
25 statistics. If another man is presumed under this paragraph to
26 be the child's father, acknowledgment may be effected only with
27 the written consent of the presumed father or after the
28 presumption has been rebutted;

29 ~~(f) Evidence of statistical probability of paternity based~~
30 ~~on blood or genetic testing establishes the likelihood that he~~
31 ~~is the father of the child, calculated with a prior probability~~
32 ~~of no more than 0.5 (50 percent), is 99 percent or greater;~~

33 (g) He and the child's biological mother have executed a
34 recognition of parentage in accordance with section 257.75 and
35 another man is presumed to be the father under this subdivision;

36 (h) (g) He and the child's biological mother have executed

1 a recognition of parentage in accordance with section 257.75 and
2 another man and the child's mother have executed a recognition
3 of parentage in accordance with section 257.75; or

4 ~~(f)~~ (h) He and the child's biological mother executed a
5 recognition of parentage in accordance with section 257.75 when
6 either or both of the signatories were less than 18 years of age.

7 Sec. 2. Minnesota Statutes 2004, section 257.57,
8 subdivision 2, is amended to read:

9 Subd. 2. [ACTIONS UNDER OTHER PARAGRAPHS OF SECTION
10 257.55, SUBDIVISION 1.] The child, the mother, or personal
11 representative of the child, the public authority chargeable by
12 law with the support of the child, the personal representative
13 or a parent of the mother if the mother has died or is a minor,
14 a man alleged or alleging himself to be the father, or the
15 personal representative or a parent of the alleged father if the
16 alleged father has died or is a minor may bring an action:

17 (1) at any time for the purpose of declaring the existence
18 of the father and child relationship presumed under ~~section~~
19 sections 257.55, subdivision 1, paragraph (d), (e), ~~(f)~~, (g), or
20 (h), and 257.62, subdivision 5, paragraph (b), or the
21 nonexistence of the father and child relationship presumed under
22 section 257.55, subdivision 1, clause (d) of that subdivision;

23 (2) for the purpose of declaring the nonexistence of the
24 father and child relationship presumed under section 257.55,
25 subdivision 1, paragraph (e) or (g), only if the action is
26 brought within six months after the person bringing the action
27 obtains the results of blood or genetic tests that indicate that
28 the presumed father is not the father of the child;

29 (3) for the purpose of declaring the nonexistence of the
30 father and child relationship presumed under ~~section 257-55~~
31 subdivision-1-paragraph-(f) 257.62, subdivision 5, paragraph
32 (b), only if the action is brought within three years after the
33 party bringing the action, or the party's attorney of record,
34 has been provided the blood or genetic test results; or

35 (4) for the purpose of declaring the nonexistence of the
36 father and child relationship presumed under section 257.75,

1 subdivision 9, only if the action is brought by the minor
2 signatory within six months after the minor signatory reaches
3 the age of 18. In the case of a recognition of parentage
4 executed by two minor signatories, the action to declare the
5 nonexistence of the father and child relationship must be
6 brought within six months after the youngest signatory reaches
7 the age of 18.

8 Sec. 3. Minnesota Statutes 2004, section 257.62,
9 subdivision 5, is amended to read:

10 Subd. 5. [POSITIVE TEST RESULTS.] (a) If the results of
11 blood or genetic tests completed in a laboratory accredited by
12 the American Association of Blood Banks indicate that the
13 likelihood of the alleged father's paternity, calculated with a
14 prior probability of no more than 0.5 (50 percent), is 92
15 percent or greater, upon motion the court shall order the
16 alleged father to pay temporary child support determined
17 according to chapter 518. The alleged father shall pay the
18 support money to the public authority if the public authority is
19 a party and is providing services to the parties or, if not,
20 into court pursuant to the Rules of Civil Procedure to await the
21 results of the paternity proceedings.

22 (b) If the results of blood or genetic tests completed in a
23 laboratory accredited by the American Association of Blood Banks
24 indicate that likelihood of the alleged father's paternity,
25 calculated with a prior probability of no more than 0.5 (50
26 percent), is 99 percent or greater, there is an evidentiary
27 presumption that the alleged father is ~~presumed-to-be~~ the parent
28 and the party opposing the establishment of the alleged father's
29 paternity has the burden of proving by clear and convincing
30 evidence that the alleged father is not the father of the child.

1 Senator moves to amend S.F. No. 563 as follows:
2 Amend the title as follows:
3 Page 1, line 2, delete "sex offenders" and insert "certain
4 convicted persons"

Senators Marty, Skoglund, Chaudhary, Ranum and Foley introduced--
S.F. No. 563: Referred to the Committee on Judiciary.

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A bill for an act

relating to child custody; disallowing sex offenders
from becoming custodians of unrelated children;
amending Minnesota Statutes 2004, sections 257C.03,
subdivision 7; 518.179, by adding a subdivision.

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

Section 1. Minnesota Statutes 2004, section 257C.03,
subdivision 7, is amended to read:

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; 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
interested third party; and

(3) show by clear and convincing evidence that granting the

1 petition would not violate section 518.179, subdivision 1a.

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

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

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

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

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

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

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

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

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

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

22 Sec. 2. Minnesota Statutes 2004, section 518.179, is
23 amended by adding a subdivision to read:

24 Subd. 1a. [CUSTODY OF NONBIOLOGICAL CHILD.] A person
25 convicted of a crime described in subdivision 2 may not be
26 considered for custody of a child unless the child is the
27 person's child by birth or adoption.

Senate File 563

Note that section 519.179, subdivision 2, cited on page 2, line 25, extends to other crimes besides sex crimes.

Subd. 2. Applicable crimes. This section applies to the following crimes or similar crimes under the laws of the United States, or any other state:

- (1) ~~murder~~ in the first, second, or third degree under section 609.185, 609.19, or 609.195;
- (2) ~~manslaughter~~ in the first degree under section 609.20;
- (3) ~~assault in the~~ first, second, or third degree under section 609.221, 609.222, or 609.223;
- (4) ~~kidnapping~~ under section 609.25;
- (5) ~~depriving another of custodial or parental rights~~ under section 609.26;
- (6) soliciting, inducing, promoting, or receiving profit derived from prostitution involving a minor under section 609.322;
- (7) criminal sexual conduct in the first degree under section 609.342;
- (8) criminal sexual conduct in the second degree under section 609.343;
- (9) criminal sexual conduct in the third degree under section 609.344, subdivision 1, paragraph (c), (f), or (g);
- (10) solicitation of a child to engage in sexual conduct under section 609.352;
- (11) incest under section 609.365;

- (12) malicious punishment of a child under section 609.377;
- (13) neglect of a child under section 609.378;
- (14) terroristic threats under section 609.713; or
- (15) felony harassment or stalking under section 609.749, subdivision 4.