

SF667 - 1E - Minnesota Indian Family Preservation Act

Chief Author: **Mary Kunesh**  
 Committee: **Judiciary And Public Safety**  
 Date Completed: **2/20/2023 4:01:05 PM**  
 Lead Agency: **Supreme Court**  
 Other Agencies:  
     Human Services Dept

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
State Total						
<b>Total</b>		-	-	-	-	-
<b>Biennial Total</b>				-		-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
<b>Total</b>		-	-	-	-	-

**Lead LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Karen McKey    **Date:** 2/20/2023 4:01:05 PM  
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**State Cost (Savings) Calculation Details**

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\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
<b>Total</b>		-	-	-	-	-
<b>Biennial Total</b>				-		-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>		-	-	-	-	-
<b>Biennial Total</b>				-		-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>		-	-	-	-	-
<b>Biennial Total</b>				-		-

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<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
<b>Total</b>	-	-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Karen McKey    **Date:** 2/20/2023 3:24:46 PM  
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<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

**Bill Description**

SF667-1E creates new law that clarifies the Minnesota Indian Family Preservation Act and the federal Indian Child Welfare Act are applicable without exception in any child placement proceeding involving an Indian child where custody is granted to someone other than a parent or an Indian custodian, and pertains to all Indian child custody or child placement proceedings regardless of whether the Tribe’s members are on or off the reservation and regardless of the procedural posture of the proceeding. This bill clarifies that the state of Minnesota acknowledges federally recognized Indian Tribes as sovereign political entities that have inherent sovereign authority to pass their own laws, maintain their own systems of governance, and determine their own jurisdiction, and only the federal government may limit their sovereign authority.

**Assumptions**

This bill requires the child-placing agency or court to ensure an emergency removal or placement terminates immediately when removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child, and to expeditiously initiate a child placement proceeding. This bill creates a separation of powers issue by creating a duty on the court to initiate a child placement proceeding.

Minn. R. Juv. P. 42.08, subd. 2 sets forth the requirement of the court to determine if a child in need of protective services is an Indian child, and if so, rules 28-31 of the Minnesota Juvenile Protection Rules and the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act shall apply. It is assumed the Minnesota Juvenile Protection Rules apply to this bill. It is further assumed if this bill conflicts with any procedural rules or access to case records, the Minnesota Juvenile Protection Rules and the Public Rules of Access to Court Records are controlling. Minn. Stat. § 260C.151, subd. 1 and Minn. R. Juv. P. 44.02, subd. 1(a) require court administration to serve a petition and summons in juvenile protection proceedings. This bill establishes service of any petition governed by section 260.751 to 260.835 to be the responsibility of the child-placing agency or an individual petitioner. This bill conflicts with court rules regarding service of the petition. This bill directs the court to allow appearances by telephone, Zoom, or other electronic medium for Tribal representatives, the child’s Indian parents, or the Indian custodian. Minnesota Juvenile Protection Rules provide for the appearance of parties and participants using remote technology. The sections of the bill that conflict with court rules creates a separation of powers issue.

This bill expands the active efforts that a child-placing agency must attempt to preserve the Indian child’s family, and prohibits the court from ordering an out-of-home or permanency placement unless the child-placing agency made active efforts that were unsuccessful. This bill requires the court to make additional findings regarding the child-placing agency’s active effort. Current law requires the court to make certain findings when ordering an out-of-home permanency placement. It is assumed this bill may impact hearing time and court order writing time.

This bill clarifies an Indian Tribe and the state of Minnesota share concurrent jurisdiction over an involuntary child placement proceeding when the Indian child resides or is domiciled outside of the reservation of the Tribe.

The Juvenile Protection Rules authorize the accessibility of juvenile protection case records. See Minn. R. Juv. P. 8. This

bill creates a separation of powers issue by authorizing each party to a proceeding under this bill the right to examine court records filed with the court in a juvenile protection proceeding case involving an Indian child. Some juvenile protection records are not accessible to parents. Minn. R. Juv. P. 8.04, subd. 3.

This bill requires the court to give full faith and credit to Tribal court placement orders and to the public acts, records, and judicial proceedings of an Indian Tribe in all proceedings under MIFPA. Minn. Gen. R. Prac. 10.01 currently requires the courts to follow applicable state and federal statutes, regulations, and rules that either mandate or provide procedures for recognition and enforcement of orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe, which includes the Indian Child Welfare Act and Minnesota Indian Family Preservation Act.

This bill modifies the evidentiary requirements for the court to find by clear and convincing evidence that continued custody of the Indian child by the child's parents or Indian custodian would likely result in serious emotional damage or serious physical damage. However, it is not clear what constitutes "serious emotional damage or serious physical damage" as this is not defined in this bill. This bill does include a new definition for "imminent physical damage or harm."

This bill requires a court to determine when removal of an Indian child was improper, to invalidate orders that violate certain statutory provisions, and to immediately return the Indian child unless the return of the child would subject the child to substantial and immediate danger or threat of such danger. It is assumed a hearing will be required for the court to review and make findings to support a determination of an improper removal or whether it is safe to return the child. It is further assumed this bill will impact hearing time and court order writing time.

### **Expenditure and/or Revenue Formula**

It is not possible to estimate the impact on case filings, hearing time, and court order writing time. Any impact to the courts will be absorbed.

### **Long-Term Fiscal Considerations**

None

### **Local Fiscal Impact**

None

### **References/Sources**

#### **Agency Contact:**

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 Committee: **Judiciary And Public Safety**  
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<b>Total</b>	-	-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Kate Schiller    **Date:** 2/20/2023 1:49:21 PM  
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<b>Biennial Total</b>			-			-
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<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

**Bill Description**

This bill codifies the federal Indian Child Welfare Act (ICWA) into state law under the Minnesota Indian Family Preservation Act (MIFPA).

**Assumptions**

It is assumed that this bill codifies current practice into state law. As a result, there is not a cost to the state.

**Expenditure and/or Revenue Formula**

This bill does not have an additional cost because it reflects DHS's current responsibilities under the MIFPA and ICWA.

**Long-Term Fiscal Considerations**

**Local Fiscal Impact**

**References/Sources**

Senate Counsel, Research and Fiscal Analysis

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