
T H E M I N N E S O T A
C O U N T Y A T T O R N E Y S
A S S O C I A T I O N

February 6, 2023

Senator Mary Kunesh
3209 Minnesota Senate Building
St. Paul, MN 55155

Dear Senator Kunesh:

Thank you for your work and collaboration with the Minnesota County Attorneys Association (MCAA) on the contents of SF 667. We support the goals of the bill and recognize the importance of codifying the full range of protections for Indian families and children provided by the federal Indian Child Welfare Act (ICWA) into our current state Minnesota Indian Family Preservation Act (MIFPA).

MCAA values the work that is being done by your office, by our eleven sovereign nations in Minnesota, and many others involved, for these needed policy changes. MCAA appreciates the opportunity to work with our Minnesota tribes and to be invited and involved in this process.

MCAA recognizes that strong, collaborative relationships with our tribes is integral to our ICWA/MIFPA work. County attorneys statewide also acknowledge that there is always more to be learned and more relationship building to do. County attorneys have participated in trainings focused on ICWA/MIFPA, and they have been a part of the group that led to the amended Minnesota Rules of Juvenile Protection Procedure, which encompassed more ICWA/MIFPA provisions. MCAA also has an ICWA Subcommittee, dedicated to continuing to assist and improve ICWA/MIFPA practices amongst county attorneys across the state.

As this bill moves forward, we believe it is important to continue a dialog around two items: (1) the definition of imminent physical damage or harm, and (2) qualified expert witness testimony for transfer of custody petitions, temporary custody to the agency petitions, and permanent custody to the agency petitions.

MCAA is concerned that the current proposed definition of *imminent physical damage or harm* in lines 4.24-4.26, could unnecessarily leave children in unsafe situations or at risk because their circumstances would not rise to the higher standard created with this definition. The federal ICWA has never had a definition for *imminent physical damage or harm*. Additionally, in 2016, when the Bureau of Indian Affairs (BIA) was reviewing and amending the federal guidelines for ICWA, there was much conversation, nationwide, about what *imminent physical damage or harm* means. The final rule did not include a definition for *imminent physical damage or harm* because it was “determined that the statutory phrase is clear and understandable as written, such that no further elaboration is needed.”

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(*Federal Register, Vol. 81, Tuesday, June 14, 2016, pgs. 38793-38794.*) MCAA would welcome the opportunity to further discuss the proposed definition with you and our tribal partners.

MCAA is also concerned with the current proposed requirements for qualified expert witness testimony found on lines 20.20-20.26. Currently, a Qualified Expert Witness (QEW) is legally required under ICWA and MIFPA in two situations: (1) when an Indian child is ordered into foster care, and (2) for an involuntary termination of the parental rights of an Indian child. A QEW is an individual designated by the child's Indian tribe as someone who is recognized by the tribal community as knowledgeable in tribal customs related to family and childrearing practices.

Senate File 667 expands this legally required QEW testimony to all involuntary transfers of custody (to someone other than a parent), all temporary custody to the agency petitions, and all permanent custody to the agency petitions. While the MCAA agrees that QEW testimony from the child's Indian tribe is integral, we are concerned that the current language in lines 20.20-20.26 may lead to too much ambiguity regarding the practice of ICWA/MIFPA. This ambiguity could lead to protracted court time and unnecessarily longer permanency timelines for Indian children. The current law allows for each individual tribe on a case, to choose whether they want to provide QEW testimony for those three types of petitions. We welcome the opportunity to further discuss this area of the bill to try to minimize these ambiguities with you and our tribal partners.

We greatly appreciate the time and effort that has gone into this legislation and stand ready and willing to continue the dialog in future conversations as this bill moves forward.

Sincerely,



Erin Johnson, Co-Chair
MCAA ICWA Subcommittee
Assistant Washington County Attorney



Heather Capistrant, Co-Chair
MCAA ICWA Subcommittee
Assistant Ramsey County Attorney