

S.F. No. 667 – Modifying the Minnesota Indian Family Preservation Act

Author: Senator Mary Kunesh

Prepared by: Aly Hoffman Litchy, Senate Counsel (651/296-4394)

Date: February 6, 2023

Section 1 [260.752] states that the Minnesota Indian Family Preservation Act (MIFPA) and the federal Indian Child Welfare Act (ICWA) are applicable without exception in any child placement proceeding involving an Indian child where custody is granted to someone other than a parent or Indian custodian.

Section 2 (260.753) makes a technical change.

Section 3 [260.754] states the policy on Tribal-State relations.

Section 4 (260.755, subd. 1a) replaces “local social services agency” with “child-placing agency” in the definition of “active efforts.”

Section 5 (260.755, subd. 3) makes technical changes to the definition of “child placement proceeding” and adds that the definition includes all placements where Indian children are placed out-of-home or away from the care, custody, or control of their parents or Indian custodian that do not implicate custody between the parents.

Section 6 [260.755, subd. 3a] adds the definition of “child-placing agency.”

Section 7 [260.755, subd. 3b] adds the definition of “child placement.”

Section 8 [260.755, subd. 4a] adds the definition of “custody.”

Section 9 [260.755, subd. 5a] adds the definition of “emergency proceeding.”

Section 10 [260.755, subd. 5b] adds the definition of “extended family member.”

Section 11 [260.755, subd. 6a] adds the definition of “imminent physical damage or harm.”

Section 12 [260.755, subd. 16a] adds the definition of “public act.”

Section 13 (260.755, subd. 20) removes language regarding the conferral of jurisdiction from the definition of “Tribal court.”

Section 14 (260.755, subd. 22) replaces “local social services agency” with “child-placing agency” in the definition of “voluntary foster care placement.”

Section 15 [260.758] creates a new section detailing the emergency removal or placement of an Indian child.

Subdivision 1 clarifies that nothing in MIFPA shall be construed to prevent the emergency removal of an Indian child to prevent imminent serious physical damage or harm to the child.

Subdivision 2 requires an emergency removal or placement to terminate immediately when no longer necessary to prevent imminent physical damage or harm and outlines the steps the child-placing agency must take. Clarifies that the state has temporary emergency jurisdiction until jurisdiction is transferred to the appropriate Indian Tribe.

Subdivision 3 lists the requirements for a petition for emergency removal or continued emergency placement of an Indian child.

Subdivision 4 provides emergency proceeding requirements a court must follow, which include holding a hearing no later than 72 hours after the removal of an Indian child and whenever new information indicates the emergency has ended.

Subdivision 5 provides when an emergency removal or placement terminates. Prohibits an emergency removal or placement to extend beyond 30 days unless the court finds by a showing of clear and convincing evidence that the continued removal or placement is necessary to prevent imminent physical damage or harm, the court is unable to transfer the proceeding to the Indian child’s Tribal court, or the court could not initiate a child custody proceeding with the protections required.

Section 16 (260.761) modifies notice requirements.

Subdivision 1 modifies who must make the inquiry into whether a child may have lineage to an Indian Tribe and modifies when the inquiry must take place.

Subdivision 2 sets forth the requirements provided in the initial notice of the family assessment or investigation, requires a child-placing agency to include the Tribe in service planning and progress updates, and makes other technical changes. Requires a child-placing agency or individual petitioner to serve any petition by certified or registered mail at least 10 days before an admit-deny hearing and allows a Tribe to request up to 20 additional days to prepare for the hearing.

Subdivision 3 makes conforming and technical changes, including updating “agency” to “child-placing agency” and “person” to “individual petitioner.”

Subdivision 4 makes conforming and technical changes, including updating “agency” to “child-placing agency” and “person” to “individual petitioner.”

Subdivision 5 makes conforming and technical changes, including updating “agency” to “child-placing agency.”

Subdivision 6 allows an Indian child’s Tribe to intervene at any point in any child placement proceeding brought under MIFPA.

Subdivision 6a requires a child-placing agency, upon request, to give full cooperation to a Tribal social services agency, including access to all files concerning an Indian child.

Subdivision 7 is stricken.

Section 17 (260.7611) makes a technical change.

Section 18 (260.762) modifies definition of active efforts and efforts to promote family reunification.

Subdivision 1 states that active efforts are not required to prevent the voluntary out-of-home placement of an Indian child.

Subdivision 2 replaces “local social services agency” with “child-placing agency.”

Subdivision 3 requires a party seeking the termination of parental rights, other permanency action, or a placement of an Indian child to show the court that active efforts were made to provide remedial services and rehabilitative programs and that those efforts were unsuccessful. Prohibits a court from ordering an out-of-home or permanency placement unless the child-placing agency made active efforts that were unsuccessful. Updates the activities a court must consider and make findings on in determining whether active efforts were made by a child-placing agency.

Section 19 (260.765, subd. 1) requires a child-placing agency to follow the notice requirements under section 260.761 when determining whether a child is an Indian child.

Section 20 [260.765, subd. 1b] requires a child-placing agency, upon request, to give full cooperation to a Tribal social services agency, including access to all files concerning an Indian child.

Section 21 (260.765, subd. 2) replaces “local social services agency” with “child-placing agency” and adds Indian custodian to who must be notified when an Indian child is voluntarily placed in foster care. Moves language relating to data access to section 260.765, subd. 1b.

Section 22 (260.765, subd. 3) allows a Tribal social services agency, the Indian custodian, and the parents of a child to intervene in an administrative review of a voluntary foster care placement.

Section 23 [260.765, subd. 3a] requires valid consent to foster care placement or termination of parental rights to be executed in writing and recorded before a judge. Also requires the court to certify that the parent or Indian custodian fully understood the explanation. Invalidates any consent given prior to, or within 10 days after, a birth of an Indian child.

Section 24 (260.765, subd. 4) allows a parent or Indian custodian to withdraw consent to a child placement at any time and requires the child to be returned.

Section 25 [260.765, subd. 4a] allows a parent to withdraw the consent to a termination of parental rights or adoptive placement at any time prior to the entry of a final decree and requires the child to be returned.

Section 26 [260.765, subd. 4b] allows a parent to withdraw consent after a final decree of adoption on the grounds that consent was obtained through fraud or duress and allows the parent to petition the court to vacate the decree. Prohibits an adoption effective for at least two years from being invalidated under this subdivision unless otherwise permitted under state law.

Section 27 (260.771) modifies the requirements for involuntary child placement proceedings.

Subdivision 1 modifies when an Indian Tribe has jurisdiction over a child placement proceeding, allows a Tribe to grant concurrent jurisdiction with the state, and states that a Tribe and the state have concurrent jurisdiction over a proceeding involving an Indian child who resides or is domiciled outside of the reservation of the Tribe.

Subdivision 1a requires that active efforts described in section 260.762 are made in any child placement proceeding.

Subdivision 1b requires a child-placing agency or individual petitioner to follow the placement preferences in subdivision 7 of this section.

Subdivision 1c requires a child-placing agency or individual petitioner to make active efforts to identify and locate the Indian child's siblings and extended family members.

Subdivision 1d provides that the notice requirements described in section 260.761 apply to all involuntary child placement proceedings.

Subdivision 2 makes technical changes.

Subdivision 2a allows an Indian child's Tribe, parent or parents, and Indian custodian to intervene at any point in a state court child placement proceeding.

Subdivision 2b gives the parent or parents or Indian custodian the right to be represented by an attorney in any state court child placement proceeding and allows for the appointment of an attorney under certain circumstances.

Subdivision 2c allows each party to an involuntary child placement proceeding to examine all reports or documents filed with the court.

Subdivision 2d requires a child-placing agency or individual, upon request, to give full cooperation to a Tribal social services agency at any subsequent stage of a child-placing agency's involvement with an Indian child, including access to all files concerning an Indian child.

Subdivision 3 requires a court to transfer a child placement proceeding to the jurisdiction of a Tribe.

Subdivision 3a contains no changes.

Subdivision 4 requires a 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.

Subdivision 5 authorizes child-placing agencies to enter into agreements with Indian Tribes with respect to the care and custody of Indian children and jurisdiction over child custody proceedings.

Subdivision 6 requires the court to determine by clear and convincing evidence, including the testimony of a qualified expert witness, that continued custody of the Indian child by the child's parents or Indian custodian would likely result in serious emotional or physical damage to the child. Makes technical changes.

Subdivision 7 states the placement preferences for all proceedings where custody of an Indian child may be removed from the parent.

Subdivision 8 requires guardian ad litem to be specifically trained in the provision of services to Indian children, parent or parents, and Indian custodians.

Section 28 [260.774] provides the procedure and requirements when an Indian child is improperly removed from the custody of the child's parent or parents.

Subdivision 1 requires a court to decline jurisdiction over a petition in a child custody proceeding when an Indian child was improperly removed from the parent or parents or where a petitioner improperly retained custody after a visit or temporary relinquishment of custody. Also requires the court to immediately return the child unless the return would subject the child to substantial and immediate danger or threat of such danger.

Subdivision 2 requires an order for out-of-home placement, transfer of custody, termination of parental rights, or other permanent change in custody to be invalidated when it is shown by a preponderance of the evidence that certain statutes were violated pertaining to notice requirements, maltreatment assessments and investigations, active efforts, voluntary foster care placement, and involuntary child placement proceedings. Provides who may file a petition to invalidate. Requires the court, upon a finding that a violation occurred, to dismiss the petition without prejudice and return the Indian child unless the child would be subjected to imminent damage or harm.

Subdivision 3 allows a biological parent or prior Indian custodian to petition for return of custody when a final decree of adoption is vacated or set aside, or the parental rights of the adoptive parents are terminated. Provides who may file a petition for return of custody and when a petition may be filed.

Section 29 [260.7745] allows a Tribe and a county to enter into a written agreement that transfers the responsibility for the screening and initial response to a child maltreatment report from the county to the Tribe.

Section 30 (260.781) modifies provisions relating to records and information availability.

Subdivision 1 requires that a request for anonymity be included in the information provided to the Department of Human Services and the Secretary of the Interior and that the request must remain confidential and not subject to the Freedom of Information Act. Requires the Secretary of the Interior to disclose any other necessary information for the membership of an Indian child in the Tribe in which the child may be eligible for membership or for determining any rights or benefits associated with that membership.

Subdivision 2 makes a technical change.

Subdivision 3 requires a court, upon application, to inform an Indian individual who has reached the age of 18 and was the subject of an adoptive placement of the Tribal affiliation of the individual's parents and provide any other information to protect any rights flowing from that individual's Tribal relationship.

Section 31 (260.785, subd. 2) replaces "local social services agency" with "child-placing agency."

Section 32 (260.791) replaces "local social services agency" with "child-placing agency."

Section 33 (260.795, subd. 1) replaces "local social services agency" with "child-placing agency."

Section 34 (260.805) replaces "local social services agency" with "child-placing agency."

Section 35 (260.821, subd. 2) replaces "local social services agency" with "child-placing agency."

Section 36 (260.835, subd. 2) states the American Indian Child Welfare Advisory Council does not expire.

Section 37 [260.836] contains a severability clause.

Section 38 (Revisor Instruction) instructs the revisor to renumber certain sections, rename certain section titles, and make necessary cross-reference changes.

Section 39 (Repealer) repeals section 260.755, subd. 17, which defined "private child-placing agency."