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S.F. No. 4480 – Minnesota Indian Family Preservation Act modifications (1st Engrossment)

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Bill Overview

The federal Indian Child Welfare Act (ICWA) establishes procedures and requirements for child custody proceedings that involve an Indian child. The Minnesota Indian Family Preservation Act (MIFPA) was originally enacted in 1985 to strengthen and expand upon parts of ICWA. In the 2023 legislative session, the legislature codified ICWA into state MIFPA statutes, added a purpose statement, and added additional definitions and clarifications.

S.F. 4480 further modifies MIFPA by amending definitions and making technical and conforming changes. Additionally, the bill modifies notice requirements for child placement proceedings, inquiry procedures, and the appointment of counsel in child placement proceedings involving an Indian child.

Section Summaries

Article 1 – Minnesota Indian Family Preservation Act Provisions

Section 1 (amends 260.755, subd. 1a) modifies the definition of “active efforts” to require the engagement of the Indian child, the Indian child’s parents, the Indian custodian, the extended family, and the Tribe and requires active efforts to be made in all child placement proceedings involving an Indian child.

Section 2 (amends 260.755, subd. 2a) makes technical changes to the definition of “best interests of an Indian child.”

Section 3 (amends 260.755, subd. 3) clarifies that a child placement proceeding under MIFPA is a domestic relations proceeding.

Section 4 (amends 260.755, subd. 3a) modifies the definition of “child-placing agency” by adding an Indian custodian as who a child-placing agency provides assistance to. Makes other technical changes.

Section 5 (amends 260.755, subd. 5) makes technical changes to the definition of “demand.”

Section 6 (amends 260.755, subd. 5b) provides that the legal parent, guardian, or custodian of an Indian child’s sibling is not an extended family member or relative of the Indian child unless they are independently related to the Indian child.

Section 7 (amends 260.755, subd. 14) makes technical changes to the definition of “parent.”

Section 8 (adds 260.755, subd. 15a) adds the definition of “petitioner” into MIFPA.

Section 9 (amends 260.755, subd. 17a) modifies the definition of “qualified expert witness” by removing the requirement that the witness must have specific knowledge of the Indian child’s Tribe’s culture and customs, by adding a reference to MIFPA, and by replacing the mention of specific child placement proceedings with the term “child placement or permanency proceedings.”

Section 10 (amends 260.755, subd. 20) makes a technical change to the definition of “Tribal court.”

Section 11 (adds 260.755, subd. 20a) adds the definition of “Tribal representative” into MIFPA.

Section 12 (amends 260.755, subd. 22) makes technical changes to the definition of “voluntary foster care placement.”

Section 13 (amends 260.758, subd. 2) requires a petitioner to ensure that an emergency removal terminates immediately when removal is no longer necessary.

Section 14 (amends 260.758, subd. 4) requires a court to determine at any court hearing during an emergency proceeding whether the emergency placement or removal is no longer necessary to prevent imminent physical damage or harm to the Indian child.

Section 15 (amends 260.758, subd. 5) modifies when an emergency removal or placement ends to include when a court orders placement of an Indian child, rather than placement in foster care.

Section 16 (amends 260.761) modifies notice provided to Tribes, parents, and Indian custodians, the inquiry of Tribal lineage, and access to files.

Subdivision 1 requires a court, in any child placement proceeding, to inquire at the commencement of the proceedings whether the child has any American Indian heritage or lineage to an Indian Tribe. Also details the process a court must follow if there is reason for the court to believe the child is an Indian child, but the court does not have sufficient evidence to make that determination.

Subdivision 2 adds petitioners into notice requirements and requires a court to allow appearances by telephone, video conference, or other electronic medium in child placement

proceedings. Updates requirements for a court providing notice to an Indian child's parents, Indian custodian, and Indian child's Tribe and what the notice must include.

Subdivision 3 requires a petitioner to inform the birth parents of an Indian child of any services available and makes other technical changes.

Subdivision 4 makes conforming changes to "petitioner."

Subdivision 5 makes technical changes.

Subdivision 6a adds "petitioner" into who must fully cooperate with a Tribal social services agency, including access to all files concerning an Indian child.

Section 17 (amends 260.762) modifies active efforts in child placement proceedings and duties to prevent child placement.

Subdivision 1 clarifies that acknowledging traditional helping and healing systems of an Indian child's Tribe and using those systems to help the Indian child and family as part of active efforts is required regardless of whether the Indian child's Tribe has intervened in the proceedings. Removes language stating that active efforts are not required to prevent voluntary out-of-home placement.

Subdivision 2a prohibits a court from ordering a child placement, termination of parental rights, or temporary or permanent change in custody of an Indian child unless the court finds active efforts were made to preserve the Indian child's family. Describes what the active efforts must entail and requires the court to make certain findings in determining whether active efforts were made.

Subdivision 2b allows a court to find active efforts were made for adoptions under chapter 259 using different findings than other child placement proceedings.

Section 18 (amends 260.763, subd. 1) provides that a Tribal determination of the Tribe's exclusive jurisdiction is conclusive when an Indian child resides or is domiciled within the reservation of that Tribe.

Section 19 (amends 260.763, subd. 4) requires a court, absent good cause to the contrary, to transfer a child placement proceeding to the jurisdiction of a Tribe upon a motion or request by the Indian child's parent, Indian custodian, or Tribe, and provides when such motion or request can be made.

Section 20 (amends 260.763, subd. 5) makes conforming changes.

Section 21 (amends 260.765, subd. 2) removes the reference to foster care and replaces it with "out of the care of the Indian child's parent or Indian custodian" when referring to providing notice for a voluntary placement.

Section 22 (amends 260.765, subd. 3a) requires a valid consent to adoption to be executed in writing and recorded before a judge and requires the judge to find that the terms of consent were fully explained and fully understood.

Section 23 (amends 260.765, subd. 4b) makes technical changes.

Section 24 (amends 260.771, subd. 1a) makes technical and conforming changes.

Section 25 (amends 260.771, subd. 1b) makes a conforming change.

Section 26 (amends 260.771, subd. 1c) requires a child-placing agency or petitioner, when ensuring active efforts are made, to explore placement with extended family members and ensure the Indian child's relationship with the extended family and Tribe.

Section 27 (amends 260.771, subd. 2b) modifies the appointment of counsel in child placement proceedings that involve an Indian child by clarifying which proceedings the Indian child's parent or Indian custodian have the right to be represented by an attorney. Provides when a court may appoint counsel for an Indian child under ten years of age and requires the court to appoint any counsel prior to the first hearing on the petition. Allows for the appointment of counsel at any stage of the proceeding if the court deems it necessary. Allows appointments to be made through the Statewide Office of Appellate Counsel and Training, or other mechanism chosen by the court.

Section 28 (amends 260.771, subd. 2d) makes conforming changes.

Section 29 (adds 260.771, subd. 2e) prohibits persons who are currently a placement for an Indian child, anticipate being a placement, or have been a placement from intervening as a party to any child placement proceedings, termination of parental rights proceedings, and transfer of custody proceedings.

Section 30 (adds 260.771, subd. 2f) allows a Tribe that an Indian child may be eligible for membership in to be a party to the child placement proceeding without needing to file a motion. Allows an Indian child's Tribe to appear remotely at hearings and file documents with the court using an alternative method and exempts the Tribe from filing fees and pro hac vice requirements.

Section 31 (amends 260.771, subd. 6) makes technical and conforming changes and updates the term "involuntary foster care placement proceeding" to "involuntary placement proceeding."

Section 32 (amends 260.773, subd. 1) modifies when an Indian child is required to be placed in the least restrictive setting to include when an Indian child is removed from an Indian custodian, rather than just the Indian child's parent.

Section 33 (amends 260.773, subd. 2) requires a petitioner to also recognize the Indian child's Tribe's order of placement, rather than just the child-placing agency and court.

Section 34 (amends 260.773, subd. 3) updates the subdivision title from "placement options" to "placement preferences for temporary proceedings" and makes a technical change.

Section 35 (amends 260.773, subd. 4) updates the subdivision title from "placement preference" to "placement preferences for permanent proceedings" and makes a technical change.

Section 36 (amends 260.773, subd. 5) requires a child-placing agency and petitioner, rather than the county, to defer to the judgment of an Indian child's Tribe as to the suitability of a placement.

Section 37 (amends 260.773, subd. 10) requires a petitioner, along with the child-placing agency and the court, to give weight to a parent's desire for anonymity in applying placement preferences.

Section 38 (amends 260.773, subd. 11) makes a technical change.

Section 39 (amends 260.774, subd. 1) modifies the description of improper removal to also include when custody of an Indian child was removed improperly from an Indian custodian.

Section 40 (amends 260.774, subd. 2) updates the language from "out-of-home placement" to "child placement." Requires the court, in finding that a violation of MIFPA occurred, to determine whether the Indian child's parent or Indian custodian was assessed placement costs and order reimbursement of those costs. Also requires the court to determine whether sanctions, reasonable costs, and attorney fees should be imposed on a party who willfully, intentionally, knowingly, or recklessly violates MIFPA.

Section 41 (amends 260.774, subd. 3) allows an Indian custodian to file a petition for return of custody and makes technical changes.

Section 42 (amends 260.775) makes technical changes.

Section 44 (amends 260.785, subd. 1) makes technical changes.

Section 45 (amends 260.785, subd. 3) makes technical changes.

Section 46 (amends 260.786, subd. 2) makes technical changes.

Section 47 (amends 260.795, subd. 1) makes technical changes.

Section 48 (amends 260.810, subd. 3) requires final evaluation reports to be submitted to the commissioner and requires the commissioner to compile these reports and provide the compiled report to each Tribe and makes a technical change.

Section 49 repeals the definition of local social services agency.

Article 2 – Conforming Changes

Section 1 (adds 259.201) provides that adoption proceedings under chapter 259 that involve an Indian child are child custody proceedings governed by the federal Indian Child Welfare Act (ICWA), by MIFPA, and by chapter 259 when not inconsistent with ICWA or MIFPA.

Section 2 (amends 260C.007, subd. 26b) modifies the definition of "relative of an Indian child" in the juvenile safety and placement chapter to clarify that a relative of an Indian child must be an extended family member as defined under MIFPA. Provides additional clarification that the legal parent, guardian, or custodian of an Indian child's sibling is not a relative of the Indian child unless they are independently related.

Section 3 (amends 260C.178, subd. 1) requires an Indian child to be placed according to the placement preferences under MIFPA when a court has ordered an emergency child placement.

Section 4 (amends 260C.201, subd. 1) extends the total time a child may spend in foster care without a permanency hearing from 12 to 21 months for the purposes of extending a hearing on terminating a trial home visit.

Section 5 (amends 260C.204) makes conforming changes for the extension to 15 months under section 260C.503, subdivision 1.

Section 6 (amends 260C.503, subd. 1) requires a court to hold an admit-deny hearing no later than 15 months after the child is placed in foster care, rather than 12 months. Allows a court to extend the total time a child may continue out of the home for an additional six months if the child has been in foster care for 15 months or more and certain findings are made by the court. Requires the court to have a hearing within six months of the initial extension to determine whether another extension is in the best interests of the child or if a permanency petition should be filed.

Section 7 (amends 260C.503, subd. 3) makes conforming changes for the extension to 15 months under section 260C.503, subdivision 1.

Section 8 (amends 260C.505) requires a permanency or termination of parental rights petition to be filed at or prior to the time the child has been in foster care for 14 months, rather than 11 months.

Section 9 (amends 260C.507) requires an admit-deny hearing on a permanency or termination of parental rights petition to be held no later than 15 months from a child's placement in foster care, rather than 12 months.

Section 10 (amends 260D.01) removes the requirement that chapter 260D must comply with ICWA and MIFPA.

Section 11 (adds 260D.011) provides that proceedings under chapter 260D concerning an Indian child are child custody proceedings governed by ICWA, by MIFPA, and by chapter 260D when not inconsistent with ICWA or MIFPA.

Section 12 (amends 260D.12) extends the amount of time a trial home visit can be to 12 months from six months.

Section 13 (adds 260E.015) provides that proceedings under chapter 260E that involve an Indian child are child custody proceedings governed by ICWA, by MIFPA, and by chapter 260E when not inconsistent with ICWA or MIFPA.

Section 14 (adds 524.5-2011) provides that proceedings under chapter 524 that involve an Indian child are child custody proceedings governed by ICWA, by MIFPA, and by chapter 524 when not inconsistent with ICWA or MIFPA.