

# 2015 Minnesota Statutes

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# MINNESOTA INDIAN FAMILY PRESERVATION ACT

## 260.751 CITATION.

Sections 260.751 to 260.835 may be cited as the "Minnesota Indian Family Preservation Act."

History: 1999 c 139 art 1 s 2

## 260.753 PURPOSES.

The purposes of Laws 2015, chapter 78, are to (1) protect the long-term interests, as defined by the tribes, of Indian children, their families as defined by law or custom, and the child's tribe; and (2) preserve the Indian family and tribal identity, including an understanding that Indian children are damaged if family and child tribal identity and contact are denied. Indian children are the future of the tribes and are vital to their very existence.

History: 2015 c 78 art 1 s 13

## 260.755 DEFINITIONS.

Subdivision 1.Scope.

As used in sections 260.751 to 260.835, the following terms have the meanings given them.

Subd. 1a.Active efforts.

"Active efforts" means a rigorous and concerted level of effort that is ongoing throughout the involvement of the local social services agency to continuously involve the Indian child's tribe and that uses the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe to preserve the Indian child's family and prevent placement of an Indian child and, if placement occurs, to return the Indian child to the child's family at the earliest possible time. Active efforts sets a higher standard than reasonable efforts to preserve the family, prevent breakup of the family, and reunify the family, according to section 260.762. Active efforts includes reasonable efforts as required by Title IV-E of the Social Security Act, United States Code, title 42, sections 670 to 679c.

Subd. 2.Administrative review.

"Administrative review" means review under section 260C.203.

Subd. 2a. Best interests of an Indian child.

"Best interests of an Indian child" means compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act to preserve and maintain an Indian child's family. The best interests of an Indian child support the child's sense of belonging to family, extended family, and tribe. The best interests of an Indian child are interwoven with the best interests of the Indian child's tribe.

Subd. 3. Child placement proceeding.

"Child placement proceeding" includes a judicial proceeding which could result in the following:

- (a) "Adoptive placement" means the permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption.
- (b) "Involuntary foster care placement" means an action removing an Indian child from its parents or Indian custodian for temporary placement in a foster home, institution, or the home of a guardian. The parent or Indian custodian cannot have the child returned upon demand, but parental rights have not been terminated.
- (c) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, before or instead of adoptive placement.
- (d) "Termination of parental rights" means an action resulting in the termination of the parent-child relationship under section 260C.301.

The terms include placements based upon juvenile status offenses, but do not include a placement based upon an act which if committed by an adult would be deemed a crime, or upon an award of custody in a divorce proceeding to one of the parents.

Subd. 4. Commissioner.

"Commissioner" means the commissioner of human services.

Subd. 5. Demand.

"Demand" means a written and notarized statement signed by a parent or Indian custodian of a child which requests the return of the child who has been voluntarily placed in foster care.

Subd. 6. Family-based services.

"Family-based services" means intensive family-centered services to families primarily in their own home and for a limited time.

Subd. 7.Indian.

"Indian" means a person who is a member of an Indian tribe or an Alaskan native and a member of a regional corporation as defined in section 7 of the Alaska Native Claims Settlement Act, United States Code, title 43, section 1606.

Subd. 8.Indian child.

"Indian child" means an unmarried person who is under age 18 and is:

- (1) a member of an Indian tribe; or
- (2) eligible for membership in an Indian tribe.

A determination by a tribe that a child is a member of the Indian tribe or is eligible for membership in the Indian tribe is conclusive. For purposes of this chapter and chapters 256N, 260C, and 260D, Indian child also includes an unmarried person who satisfies either clause (1) or (2), is under age 21, and is in foster care pursuant to section 260C.451.

Subd. 9.Indian child's tribe.

"Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian child's tribe is the tribe with which the Indian child has the most significant contacts. If that tribe does not express an interest in the outcome of the actions taken under sections 260.751 to 260.835 with respect to the child, any other tribe in which the child is eligible for membership that expresses an interest in the outcome may act as the Indian child's tribe.

Subd. 10.Indian custodian.

"Indian custodian" means an Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody, and control has been transferred by the parent of the child.

Subd. 11.Indian organization.

"Indian organization" means an organization providing child welfare services that is legally incorporated as a nonprofit organization, is registered with the secretary of state, and is governed by a board of directors having at least a majority of Indian directors.

Subd. 12.Indian tribe.

"Indian tribe" means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of

their status as Indians, including any Native group under the Alaska Native Claims Settlement Act, United States Code, title 43, section 1602.

Subd. 13. Local social services agency.

"Local social services agency" means the local agency under the authority of the county welfare or human services board or county board of commissioners which is responsible for human services.

Subd. 14. Parent.

"Parent" means the biological parent of an Indian child, or any Indian person who has lawfully adopted an Indian child, including a person who has adopted a child by tribal law or custom. Parent includes a father as defined by tribal law or custom. Parent does not include an unmarried father whose paternity has not been acknowledged or established. Paternity has been acknowledged when an unmarried father takes any action to hold himself out as the biological father of an Indian child.

Subd. 15. Permanency planning.

"Permanency planning" means the systematic process of carrying out, within a short time, a set of goal-oriented activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers, and the opportunity to establish lifetime relationships.

Subd. 16. Placement prevention and family reunification services.

"Placement prevention and family reunification services" means services designed to help children remain with their families or to reunite children with their parents.

Subd. 17. Private child-placing agency.

"Private child-placing agency" means a private organization, association, or corporation providing assistance to children and parents in their own homes and placing children in foster care or for adoption.

Subd. 17a. Qualified expert witness.

"Qualified expert witness" means an individual who (1) has specific knowledge of the Indian child's tribe's culture and customs, or meets the criteria in section 260.771, subdivision 6, paragraph (d), and (2) provides testimony as required by the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912, regarding out-of-home placement or termination of parental rights relating to an Indian child.

Subd. 18.Reservation.

"Reservation" means Indian country as defined in United States Code, title 18, section 1151, and any lands which are either held by the United States in trust for the benefit of an Indian tribe or individual, or held by an Indian tribe or individual subject to a restriction by the United States against alienation.

Subd. 19.Secretary.

"Secretary" means the secretary of the United States Department of the Interior.

Subd. 20.Tribal court.

"Tribal court" means a court with jurisdiction over child custody proceedings and which is either a court of Indian offenses, or a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. Except as provided in section 260.771, subdivision 5, nothing in this chapter shall be construed as conferring jurisdiction on an Indian tribe.

Subd. 21.Tribal social services agency.

"Tribal social services agency" means the unit under authority of the governing body of the Indian tribe which is responsible for human services.

Subd. 22.Voluntary foster care placement.

"Voluntary foster care placement" means a decision in which there has been participation by a local social services agency or private child-placing agency resulting in the temporary placement of an Indian child away from the home of the child's parents or Indian custodian in a foster home, institution, or the home of a guardian, and the parent or Indian custodian may have the child returned upon demand.

History: 1999 c 139 art 1 s 3; 2007 c 147 art 1 s 8,9; 2012 c 216 art 6 s 13; 2015 c 78 art 1 s 14-18

## **260.761 SOCIAL SERVICES AGENCY AND PRIVATE LICENSED CHILD-PLACING AGENCY NOTICE TO TRIBES.**

Subdivision 1.Inquiry of tribal lineage.

The local social services agency or private licensed child-placing agency shall inquire of the child, the child's parents and custodians, and other appropriate persons whether there is any reason to believe that a child brought to the agency's attention may have lineage to an Indian tribe. This inquiry shall occur at the time the child comes to the attention of the local social services agency.

## Subd. 2. Agency and court notice to tribes.

(a) When a local social services agency has information that a family assessment or investigation being conducted may involve an Indian child, the local social services agency shall notify the Indian child's tribe of the family assessment or investigation according to section 626.556, subdivision 10, paragraph (a), clause (5). Initial notice shall be provided by telephone and by e-mail or facsimile. The local social services agency shall request that the tribe or a designated tribal representative participate in evaluating the family circumstances, identifying family and tribal community resources, and developing case plans.

(b) When a local social services agency has information that a child receiving services may be an Indian child, the local social services agency shall notify the tribe by telephone and by e-mail or facsimile of the child's full name and date of birth, the full names and dates of birth of the child's biological parents, and, if known, the full names and dates of birth of the child's grandparents and of the child's Indian custodian. This notification must be provided so the tribe can determine if the child is enrolled in the tribe or eligible for membership, and must be provided within seven days. If information regarding the child's grandparents or Indian custodian is not available within the seven-day period, the local social services agency shall continue to request this information and shall notify the tribe when it is received. Notice shall be provided to all tribes to which the child may have any tribal lineage. If the identity or location of the child's parent or Indian custodian and tribe cannot be determined, the local social services agency shall provide the notice required in this paragraph to the United States secretary of the interior.

(c) In accordance with sections 260C.151 and 260C.152, when a court has reason to believe that a child placed in emergency protective care is an Indian child, the court administrator or a designee shall, as soon as possible and before a hearing takes place, notify the tribal social services agency by telephone and by e-mail or facsimile of the date, time, and location of the emergency protective case hearing. The court shall make efforts to allow appearances by telephone for tribal representatives, parents, and Indian custodians.

(d) A local social services agency must provide the notices required under this subdivision at the earliest possible time to facilitate involvement of the Indian child's tribe. Nothing in this subdivision is intended to hinder the ability of the local social services agency and the court to respond to an emergency situation. Lack of participation by a tribe shall not prevent the tribe from intervening in services and proceedings at a later date. A tribe may participate at any time. At any stage of the local social services agency's involvement with an Indian child, the agency shall provide full cooperation to the tribal social services agency, including disclosure of all data concerning the Indian child. Nothing in this subdivision relieves the local social services agency of satisfying the notice requirements in the Indian Child Welfare Act.

## Subd. 3. Notice of potential preadoptive or adoptive placement.

In any voluntary adoptive or preadoptive placement proceeding in which a local social services agency, private child-placing agency, petitioner in the adoption, or any other party has reason to believe that a child who is the subject of an adoptive or preadoptive placement proceeding is or may be an "Indian child," as defined in section 260.755, subdivision 8, and United States Code,

title 25, section 1903(4), the agency or person shall notify the Indian child's tribal social services agency by registered mail with return receipt requested of the pending proceeding and of the right of intervention under subdivision 6. If the identity or location of the child's tribe cannot be determined, the notice must be given to the United States secretary of interior in like manner, who will have 15 days after receipt of the notice to provide the requisite notice to the tribe. No preadoptive or adoptive placement proceeding may be held until at least ten days after receipt of the notice by the tribe or secretary. Upon request, the tribe must be granted up to 20 additional days to prepare for the proceeding. The agency or notifying party shall include in the notice the identity of the birth parents and child absent written objection by the birth parents. The private child-placing agency shall inform the birth parents of the Indian child of any services available to the Indian child through the child's tribal social services agency, including child placement services, and shall additionally provide the birth parents of the Indian child with all information sent from the tribal social services agency in response to the notice.

#### Subd. 4. Unknown father.

If the local social services agency, private child-placing agency, the court, petitioner, or any other party has reason to believe that a child who is the subject of an adoptive placement proceeding is or may be an Indian child but the father of the child is unknown and has not registered with the fathers' adoption registry pursuant to section 259.52, the agency or person shall provide to the tribe believed to be the Indian child's tribe information sufficient to enable the tribe to determine the child's eligibility for membership in the tribe, including, but not limited to, the legal and maiden name of the birth mother, her date of birth, the names and dates of birth of her parents and grandparents, and, if available, information pertaining to the possible identity, tribal affiliation, or location of the birth father.

#### Subd. 5. Proof of service of notice upon tribe or secretary.

In cases where an agency or party to an adoptive placement knows or has reason to believe that a child is or may be an Indian child, proof of service upon the child's tribe or the secretary of interior must be filed with the adoption petition.

#### Subd. 6. Indian tribe's right of intervention.

In any state court proceeding for the voluntary adoptive or preadoptive placement of an Indian child, the Indian child's tribe shall have a right to intervene at any point in the proceeding.

#### Subd. 7. Identification of extended family members.

Any agency considering placement of an Indian child shall make active efforts to identify and locate extended family members.



History: 1999 c 139 art 1 s 4; 2007 c 147 art 1 s 10; 2015 c 78 art 1 s 19,20

## **260.762 DUTY TO PREVENT OUT-OF-HOME PLACEMENT AND PROMOTE FAMILY REUNIFICATION; ACTIVE EFFORTS.**

Subdivision 1.Active efforts.

Active efforts includes acknowledging traditional helping and healing systems of an Indian child's tribe and using these systems as the core to help and heal the Indian child and family.

Subd. 2.Requirements for local social services agencies.

A local social services agency shall:

- (1) work with the Indian child's tribe and family to develop an alternative plan to out-of-home placement;
- (2) before making a decision that may affect an Indian child's safety and well-being or when contemplating out-of-home placement of an Indian child, seek guidance from the Indian child's tribe on family structure, how the family can seek help, what family and tribal resources are available, and what barriers the family faces at that time that could threaten its preservation; and
- (3) request participation of the Indian child's tribe at the earliest possible time and request the tribe's active participation throughout the case.

Subd. 3.Required findings that active efforts were provided.

A court shall not order an out-of-home or permanency placement for an Indian child unless the court finds that the local social services agency made active efforts to the Indian child's family. In determining whether the local social services agency made active efforts for purposes of out-of-home placement and permanency, the court shall make findings regarding whether the following activities were appropriate and whether the local social services agency made appropriate and meaningful services available to the family based upon that family's specific needs:

- (1) whether the local social services agency made efforts at the earliest point possible to (i) identify whether a child may be an Indian child as defined in the Indian Child Welfare Act, United States Code, title 25, section 1903, and section 260.755, subdivision 8; and (ii) identify and request participation of the Indian child's tribe at the earliest point possible and throughout the investigation or assessment, case planning, provision of services, and case completion;
- (2) whether the local social services agency requested that a tribally designated representative with substantial knowledge of prevailing social and cultural standards and child-rearing practices

within the tribal community evaluate the circumstances of the Indian child's family and assist in developing a case plan that uses tribal and Indian community resources;

(3) whether the local social services agency provided concrete services and access to both tribal and nontribal services to members of the Indian child's family, including but not limited to financial assistance, food, housing, health care, transportation, in-home services, community support services, and specialized services; and whether these services are being provided in an ongoing manner throughout the agency's involvement with the family, to directly assist the family in accessing and utilizing services to maintain the Indian family, or reunify the Indian family as soon as safety can be assured if out-of-home placement has occurred;

(4) whether the local social services agency notified and consulted with the Indian child's extended family members, as identified by the child, the child's parents, or the tribe; whether extended family members were consulted to provide support to the child and parents, to inform the local social services agency and court as to cultural connections and family structure, to assist in identifying appropriate cultural services and supports for the child and parents, and to identify and serve as a placement and permanency resource for the child; and if there was difficulty contacting or engaging with extended family members, whether assistance was sought from the tribe, the Department of Human Services, or other agencies with expertise in working with Indian families;

(5) whether the local social services agency provided services and resources to relatives who are considered the primary placement option for an Indian child, as agreed by the local social services agency and the tribe, to overcome barriers to providing care to an Indian child. Services and resources shall include but are not limited to child care assistance, financial assistance, housing resources, emergency resources, and foster care licensing assistance and resources; and

(6) whether the local social services agency arranged for visitation to occur, whenever possible, in the home of the Indian child's parent, Indian custodian, or other family member or in another noninstitutional setting, in order to keep the child in close contact with parents, siblings, and other relatives regardless of the child's age and to allow the child and those with whom the child visits to have natural, unsupervised interaction when consistent with protecting the child's safety; and whether the local social services agency consulted with a tribal representative to determine and arrange for visitation in the most natural setting that ensures the child's safety, when the child's safety requires supervised visitation.

History: 2015 c 78 art 1 s 21

## **260.765 VOLUNTARY FOSTER CARE PLACEMENT.**

Subdivision 1. Determination of Indian child's tribe.

The local social services agency or private licensed child-placing agency shall determine whether a child brought to its attention for the purposes described in this section is an Indian child and the identity of the Indian child's tribe.

#### Subd. 2. Notice.

When an Indian child is voluntarily placed in foster care, the local social services agency involved in the decision to place the child shall give notice of the placement to the child's parents, tribal social services agency, and the Indian custodian within seven days of placement, excluding weekends and holidays.

If a private licensed child-placing agency makes a temporary voluntary foster care placement pending a decision on adoption by a parent, notice of the placement shall be given to the child's parents, tribal social services agency, and the Indian custodian upon the filing of a petition for termination of parental rights or three months following the temporary placement, whichever occurs first.

At this and any subsequent stage of its involvement with an Indian child, the agency shall, upon request, give the tribal social services agency full cooperation including access to all files concerning the child. If the files contain confidential or private data, the agency may require execution of an agreement with the tribal social services agency that the tribal social services agency shall maintain the data according to statutory provisions applicable to the data.

#### Subd. 3. Notice of administrative review.

In an administrative review of a voluntary foster care placement, the tribal social services agency of the child, the Indian custodian, and the parents of the child shall have notice and a right of participation in the review.

#### Subd. 4. Return of child in voluntary placement.

Upon demand by the parent or Indian custodian of an Indian child, the local social services agency or private licensed child-placing agency shall return the child in voluntary foster care placement to the parent or Indian custodian within 24 hours of the receipt of the demand. If the request for return does not satisfy the requirement of section 260.755, subdivision 5, the local social services agency or private child-placing agency shall immediately inform the parent or Indian custodian of the Indian child of the requirement.

#### Subd. 5. Identification of extended family members.

Any agency considering placement of an Indian child shall make active efforts to identify and locate extended family members.

History: 1999 c 139 art 1 s 5; 2007 c 147 art 1 s 11

## **260.771 CHILD PLACEMENT PROCEEDINGS.**

### Subdivision 1. Indian tribe jurisdiction.

An Indian tribe has exclusive jurisdiction over a child placement proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except where jurisdiction is otherwise vested in the state by existing federal law. When an Indian child is a ward of the tribal court, the Indian tribe retains exclusive jurisdiction, notwithstanding the residence or domicile of the child.

### Subd. 2. Court determination of tribal affiliation of child.

In any child placement proceeding, the court shall establish whether an Indian child is involved and the identity of the Indian child's tribe. This chapter and the federal Indian Child Welfare Act are applicable without exception in any child custody proceeding, as defined in the federal act, involving an Indian child. This chapter applies to child custody proceedings involving an Indian child whether the child is in the physical or legal custody of an Indian parent, Indian custodian, Indian extended family member, or other person at the commencement of the proceedings. A court shall not determine the applicability of this chapter or the federal Indian Child Welfare Act to a child custody proceeding based upon whether an Indian child is part of an existing Indian family or based upon the level of contact a child has with the child's Indian tribe, reservation, society, or off-reservation community.

### Subd. 3. Transfer of proceedings.

(a) In a proceeding for: (1) the termination of parental rights; or (2) the involuntary foster care placement of an Indian child not within the jurisdiction of subdivision 1, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the jurisdiction of the tribe absent objection by either parent, upon the petition of either parent, the Indian custodian, or the Indian child's tribe. The transfer is subject to declination by the tribal court of the tribe.

(b) In a proceeding for the preadoptive or adoptive placement of an Indian child not within the jurisdiction of subdivision 1, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the jurisdiction of the tribe. The transfer is subject to declination by the tribal court of the tribe. For the purposes of this subdivision, "preadoptive placement" and "adoptive placement" have the meanings give in section 260.755, subdivision 3.

(c) At any point in a proceeding for finalizing a permanency plan, the court, in the absence of good cause to the contrary and in the absence of an objection by either parent, shall transfer the proceeding to tribal court for the purpose of achieving a customary adoption or other culturally appropriate permanency option. This transfer shall be made upon the petition of a parent whose parental rights have not been terminated, the Indian custodian, or the Indian child's tribe. The transfer is subject to declination by the tribal court of the tribe.

### Subd. 3a. Good cause to deny transfer.

(a) Establishing good cause to deny transfer of jurisdiction to a tribal court is a fact-specific inquiry to be determined on a case-by-case basis. Socioeconomic conditions and the perceived

adequacy of tribal or Bureau of Indian Affairs social services or judicial systems must not be considered in a determination that good cause exists. The party opposed to transfer of jurisdiction to a tribal court has the burden to prove by clear and convincing evidence that good cause to deny transfer exists. Opposition to a motion to transfer jurisdiction to tribal court must be in writing and must be served upon all parties.

(b) The court may find good cause to deny transfer to tribal court if:

(1) the Indian child's tribe does not have a tribal court or any other administrative body of a tribe vested with authority over child custody proceedings, as defined by the Indian Child Welfare Act, United States Code, title 25, chapter 21, to which the case can be transferred, and no other tribal court has been designated by the Indian child's tribe; or

(2) the evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses and the tribal court is unable to mitigate the hardship by any means permitted in the tribal court's rules. Without evidence of undue hardship, travel distance alone is not a basis for denying a transfer.

Subd. 4. Effect of tribal court placement orders.

To the extent that any child subject to sections 260.755 to 260.835 is otherwise eligible for social services, orders of a tribal court concerning placement of such child shall have the same force and effect as orders of a court of this state. In any case where the tribal court orders placement through a local social services agency, the court shall provide to the local agency notice and an opportunity to be heard regarding the placement. Determination of county of financial responsibility for the placement shall be determined by the local social services agency in accordance with section 256G.02, subdivision 4. Disputes concerning the county of financial responsibility shall be settled in the manner prescribed in section 256G.09.

Subd. 5. Indian tribe agreements.

The commissioner is hereby authorized to enter into agreements with Indian tribes pursuant to United States Code, title 25, section 1919, respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between the state and an Indian tribe.

Subd. 6. Qualified expert witness and evidentiary requirements.

(a) In an involuntary foster care placement proceeding, the court must determine by clear and convincing evidence, including testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child as defined in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(e). In a termination of parental rights proceeding, the court must determine by evidence beyond a reasonable doubt, including testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious

emotional or physical damage to the child as defined in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(f).

(b) The local social services agency or any other party shall make diligent efforts to locate and present to the court a qualified expert witness designated by the Indian child's tribe. The qualifications of a qualified expert witness designated by the child's tribe are not subject to a challenge in Indian child custody proceedings.

(c) If a party cannot obtain testimony from a tribally designated qualified expert witness, the party shall submit to the court the diligent efforts made to obtain a tribally designated qualified expert witness.

(d) If clear and convincing evidence establishes that a party's diligent efforts cannot produce testimony from a tribally designated qualified expert witness, the party shall demonstrate to the court that a proposed qualified expert witness is, in descending order of preference:

(1) a member of the child's tribe who is recognized by the Indian child's tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices; or

(2) an Indian person from an Indian community who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and contemporary and traditional child-rearing practices of the Indian child's tribe.

If clear and convincing evidence establishes that diligent efforts have been made to obtain a qualified expert witness who meets the criteria in clause (1) or (2), but those efforts have not been successful, a party may use an expert witness, as defined by the Minnesota Rules of Evidence, rule 702, who has substantial experience in providing services to Indian families and who has substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community. The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

(e) The court may allow alternative methods of participation and testimony in state court proceedings by a qualified expert witness, such as participation or testimony by telephone, videoconferencing, or other methods.

#### Subd. 7. Order of placement preference; deviation.

(a) The court must follow the order of placement preferences required by the Indian Child Welfare Act of 1978, United States Code, title 25, section 1915, when placing an Indian child.

(b) The court may place a child outside the order of placement preferences only if the court determines there is good cause based on:

(1) the reasonable request of the Indian child's parents, if one or both parents attest that they have reviewed the placement options that comply with the order of placement preferences;

(2) the reasonable request of the Indian child if the child is able to understand and comprehend the decision that is being made;

(3) the testimony of a qualified expert designated by the child's tribe and, if necessary, testimony from an expert witness who meets qualifications of subdivision 6, paragraph (d), clause (2), that supports placement outside the order of placement preferences due to extraordinary physical or emotional needs of the child that require highly specialized services; or

(4) the testimony by the local social services agency that a diligent search has been conducted that did not locate any available, suitable families for the child that meet the placement preference criteria.

(c) Testimony of the child's bonding or attachment to a foster family alone, without the existence of at least one of the factors in paragraph (b), shall not be considered good cause to keep an Indian child in a lower preference or nonpreference placement.

(d) A party who proposes that the required order of placement preferences not be followed bears the burden of establishing by clear and convincing evidence that good cause exists to modify the order of placement preferences.

(e) If the court finds there is good cause to place outside the order of placement preferences, the court must make written findings.

(f) A good cause finding under this subdivision must consider whether active efforts were provided to extended family members who are considered the primary placement option to assist them in becoming a placement option for the child as required by section 260.762.

(g) When a child is placed outside the order of placement preferences, good cause to continue this placement must be determined at every stage of the proceedings.

History: 1999 c 139 art 1 s 6; 2007 c 147 art 1 s 12,13; 2013 c 65 s 1; 2015 c 78 art 1 s 22-25

## **260.775 PLACEMENT RECORDS.**

The commissioner of human services shall publish annually an inventory of all Indian children in residential facilities. The inventory shall include, by county and statewide, information on legal status, living arrangement, age, sex, tribe in which the child is a member or eligible for membership, accumulated length of time in foster care, and other demographic information deemed appropriate concerning all Indian children in residential facilities. The report must also state the extent to which authorized child-placing agencies comply with the order of preference described in United States Code, title 25, section 1901, et seq.

History: 1999 c 139 art 1 s 7

## **260.781 RECORDS; INFORMATION AVAILABILITY.**

Subdivision 1. Court decree information.

A state court entering a final decree or order in an Indian child adoptive placement shall provide the Department of Human Services and the child's tribal social services agency with a copy of the decree or order together with such other information to show:

- (1) the name and tribal affiliation of the child;
- (2) the names and addresses of the biological parents;
- (3) the names and addresses of the adoptive parents; and
- (4) the identity of any agency having files or information relating to the adoptive placement.

If the court records contain an affidavit of the biological or adoptive parent or parents requesting anonymity, the court shall delete the name and address of the biological or adoptive parents from the information sent to the child's tribal social services agency.

Subd. 2. Disclosure of records.

Upon the request of an adopted Indian person over the age of 18, the adoptive or foster parents of an Indian person, or an Indian tribal social services agency, the Department of Human Services shall disclose to the Indian person's tribe information necessary for membership of an Indian person in the tribe in which the person may be eligible for membership or for determining any rights or benefits associated with that membership. When the documents relating to the person contain an affidavit from the biological or adoptive parent or parents requesting anonymity, the department must use the procedures described in United States Code, title 25, section 1951, paragraph (b).

History: 1999 c 139 art 1 s 8

## **260.785 INDIAN CHILD WELFARE GRANTS.**

Subdivision 1. Primary support grants.

The commissioner shall establish direct grants to Indian tribes, Indian organizations, and tribal social services agency programs located off-reservation that serve Indian children and their families to provide primary support for Indian child welfare programs to implement the Indian Family Preservation Act.



#### Subd. 2.Special focus grants.

The commissioner shall establish direct grants to local social services agencies, tribes, Indian organizations, and other organizations for placement prevention and family reunification services for Indian children.

#### Subd. 3.Compliance grants.

The commissioner shall establish direct grants to an Indian child welfare defense corporation, as defined in section 611.216, subdivision 1a, to promote statewide compliance with the Indian Family Preservation Act and the Indian Child Welfare Act, United States Code, title 25, section 1901, et seq. The commissioner shall give priority consideration to applicants with demonstrated capability of providing legal advocacy services statewide.

#### Subd. 4.Request for proposals.

The commissioner shall request proposals for grants under subdivisions 1, 2, and 3, and specify the information and criteria required.

History: 1999 c 139 art 1 s 9

### **260.791 GRANT APPLICATIONS.**

A tribe, Indian organization, or tribal social services agency program located off-reservation may apply for primary support grants under section 260.785, subdivision 1. A local social services agency, tribe, Indian organization, or other social service organization may apply for special focus grants under section 260.785, subdivision 2. Civil legal service organizations eligible for grants under section 260.785, subdivision 3, may apply for grants under that section. Application may be made alone or in combination with other tribes or Indian organizations.

History: 1999 c 139 art 1 s 10; art 4 s 2

### **260.795 ELIGIBLE SERVICES.**

#### Subdivision 1.Types of services.

(a) Eligible Indian child welfare services provided under primary support grants include:

- (1) placement prevention and reunification services;
- (2) family-based services;
- (3) individual and family counseling;
- (4) access to professional individual, group, and family counseling;

- (5) crisis intervention and crisis counseling;
- (6) development of foster and adoptive placement resources, including recruitment, licensing, and support;
- (7) court advocacy;
- (8) training and consultation to county and private social services agencies regarding the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act;
- (9) advocacy in working with the county and private social services agencies, and activities to help provide access to agency services, including but not limited to 24-hour caretaker and homemaker services, day care, emergency shelter care up to 30 days in 12 months, access to emergency financial assistance, and arrangements to provide temporary respite care to a family for up to 72 hours consecutively or 30 days in 12 months;
- (10) transportation services to the child and parents to prevent placement or reunite the family; and
- (11) other activities and services approved by the commissioner that further the goals of the Indian Child Welfare Act and the Indian Family Preservation Act, including but not limited to recruitment of Indian staff for local social services agencies and licensed child-placing agencies. The commissioner may specify the priority of an activity and service based on its success in furthering these goals.

(b) Eligible services provided under special focus grants include:

- (1) permanency planning activities that meet the special needs of Indian families;
- (2) teenage pregnancy;
- (3) independent living skills;
- (4) family and community involvement strategies to combat child abuse and chronic neglect of children;
- (5) coordinated child welfare and mental health services to Indian families;
- (6) innovative approaches to assist Indian youth to establish better self-image, decrease isolation, and decrease the suicide rate;
- (7) expanding or improving services by packaging and disseminating information on successful approaches or by implementing models in Indian communities relating to the development or enhancement of social structures that increase family self-reliance and links with existing community resources;

(8) family retrieval services to help adopted individuals reestablish legal affiliation with the Indian tribe; and

(9) other activities and services approved by the commissioner that further the goals of the Indian Child Welfare Act and the Indian Family Preservation Act. The commissioner may specify the priority of an activity and service based on its success in furthering these goals.

(c) The commissioner shall give preference to programs that use Indian staff, contract with Indian organizations or tribes, or whose application is a joint effort between the Indian and non-Indian community to achieve the goals of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act. Programs must have input and support from the Indian community.

#### Subd. 2. Inappropriate expenditures.

Indian child welfare grant money must not be used for:

(1) child day care necessary solely because of employment or training for employment of a parent or other relative with whom the child is living;

(2) foster care maintenance or difficulty of care payments;

(3) residential facility payments;

(4) adoption assistance payments;

(5) public assistance payments for Minnesota family investment program assistance, supplemental aid, medical assistance, general assistance, general assistance medical care, or community health services authorized by sections 145A.01 to 145A.14; or

(6) administrative costs for income maintenance staff.

#### Subd. 3. Revenue enhancement.

The commissioner shall submit claims for federal reimbursement earned through the activities and services supported through Indian child welfare grants. The commissioner may set aside a portion of the federal funds earned under this subdivision to establish and support a new Indian child welfare position in the Department of Human Services to provide program development. The commissioner shall use any federal revenue not set aside to expand services under section 260.785. The federal revenue earned under this subdivision is available for these purposes until the funds are expended.

History: 1999 c 139 art 1 s 11; art 4 s 2; 1999 c 159 s 108

## **260.805 CONTINUED LEGAL RESPONSIBILITY OF LOCAL SOCIAL SERVICES AGENCIES.**

The legal responsibility of local social services agencies to provide Indian child welfare services continues, and existing services must not be reduced because of the availability of these funds.

History: 1999 c 139 art 1 s 12

## **260.810 PAYMENTS; REQUIRED REPORTS.**

### Subdivision 1. Payments.

The commissioner shall make grant payments to each approved program in four quarterly installments a year. The commissioner may certify an advance payment for the first quarter of the state fiscal year. Later payments must be made upon receipt by the state of a quarterly report on finances and program activities.

### Subd. 2. Quarterly report.

The commissioner shall specify requirements for reports, including quarterly fiscal reports, according to section 256.01, subdivision 2, paragraph (q). Each quarter, an approved program receiving an Indian child welfare grant shall submit a report to the commissioner that includes:

- (1) a detailed accounting of grant money expended during the preceding quarter, specifying expenditures by line item and year to date; and
- (2) a description of Indian child welfare activities conducted during the preceding quarter, including the number of clients served and the type of services provided.

The quarterly reports must be submitted no later than 30 days after the end of each quarter of the state fiscal year.

### Subd. 3. Final report.

A final evaluation report must be submitted by each approved program. It must include client outcomes, cost and effectiveness in meeting the goals of the Indian Family Preservation Act and permanency planning goals.

History: 1999 c 139 art 1 s 13; 2015 c 78 art 4 s 61

## **260.815 MONITORING AND EVALUATION.**

The commissioner shall design and implement methods for monitoring the delivery and evaluating the effectiveness of Indian child welfare services funded through these grants.

History: 1999 c 139 art 1 s 14

## **260.821 GRANT FORMULA.**

### Subdivision 1. Primary support grants.

(a) The amount available for grants established under section 260.785, subdivision 1, to tribes, Indian organizations, and tribal social services agency programs located off-reservation is four-fifths of the total annual appropriation for Indian child welfare grants.

(b) The commissioner shall award tribes at least 70 percent of the amount set in paragraph (a) for primary support grants. Each tribe shall be awarded a base amount of five percent of the total amount set in this paragraph. In addition, each tribe shall be allocated a proportion of the balance of the amount set in this paragraph, less the total base amounts for all reservations. This proportion must equal the ratio of the tribe's on-reservation population to the state's total on-reservation population. Population data must be based on the most recent federal census data according to the state demographer's office.

(c) The commissioner shall award Indian organizations and tribal social services agency programs located off-reservation that serve Indian children and families up to 30 percent of the amount set in paragraph (a) for primary support grants. A maximum of four multiservice Indian organizations and tribal social services agency programs located off-reservation may be awarded grants under this paragraph. "Multiservice Indian organizations" means Indian organizations recognized by the Indian community as providing a broad continuum of social, educational, or cultural services, including Indian child welfare services designed to meet the unique needs of the Indian communities in Minneapolis, St. Paul, and Duluth. Grants may be awarded to programs that submit acceptable proposals, comply with the goals and the application process of the program, and have budgets that reflect appropriate and efficient use of funds. To maintain continuity of service in Indian communities, primary support grants awarded under this paragraph which meet the grant criteria and have demonstrated satisfactory performance as established by the commissioner may be awarded on a noncompetitive basis. The commissioner may revoke or deny funding for Indian organizations or tribal social services agencies failing to meet the grant criteria established by the commissioner, and the commissioner may request new proposals from Indian organizations or tribal social services agencies to the extent that funding is available.

### Subd. 2. Special focus grants.

The amount available for grants established under section 260.785, subdivision 2, for local social services agencies, tribes, Indian organizations, and other social services organizations is one-fifth of the total annual appropriation for Indian child welfare grants. The maximum award under this subdivision is \$100,000 a year for programs approved by the commissioner.

History: 1999 c 139 art 1 s 15

## **260.831 UNDISTRIBUTED FUNDS.**

Undistributed funds must be reallocated by the Department of Human Services to any other grant categories established under section 260.785, subdivision 1 or 2, for the goals of this grant process. Undistributed funds are available until expended.

History: 1999 c 139 art 1 s 16

## **260.835 AMERICAN INDIAN CHILD WELFARE ADVISORY COUNCIL.**

### Subdivision 1. Creation.

The commissioner shall appoint an American Indian Advisory Council to help formulate policies and procedures relating to Indian child welfare services and to make recommendations regarding approval of grants provided under section 260.785, subdivisions 1, 2, and 3. The council shall consist of 17 members appointed by the commissioner and must include representatives of each of the 11 Minnesota reservations who are authorized by tribal resolution, one representative from the Duluth Urban Indian Community, three representatives from the Minneapolis Urban Indian Community, and two representatives from the St. Paul Urban Indian Community. Representatives from the urban Indian communities must be selected through an open appointments process under section 15.0597. The terms, compensation, and removal of American Indian Child Welfare Advisory Council members shall be as provided in section 15.059.

### Subd. 2. Expiration.

The American Indian Child Welfare Advisory Council expires June 30, 2018.

History: 1999 c 139 art 1 s 17; 1Sp2005 c 4 art 3 s 17; 2008 c 361 art 6 s 22; 2012 c 271 s 4; 2013 c 142 art 2 s 5; 2014 c 286 art 7 s 12; art 8 s 39; 2014 c 291 art 3 s 8