

Indian Children Welfare Manual

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Chapter 1 Introduction

1.1 History

From a historical perspective, the majority of federal policies directed at American Indian people provided an experience that was extremely negative. In particular, Indian tribes and child welfare professionals were critically concerned about the results of federal, state and local welfare policies in terms of the destruction of Indian families. Prior to 1978, Indian children were placed in foster care at a nationwide rate 10 to 20 times that for non-Indian children. These children often lost all connections with their families, extended families, tribes and cultural heritage.

Public Law 95-608, the federal Indian Child Welfare Act of 1978 (ICWA) [codified at 25 U.S.C. § 1901 et. seq.] was passed to remedy the problem of disproportionately large numbers of Indian children being placed in foster care. The law recognized “that there is no resource . . . more vital to the continued existence and integrity of Indian tribes than their children,” there has been a failure by non-Indian agencies “to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.” [25 U.S.C. § 1901]

In passing the Indian Child Welfare Act, Congress stated:

It is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes, which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operations of child and family service programs. [25 U.S.C. § 1902]

Minnesota established the above concepts as state policy, passing the Minnesota Indian Family Preservation Act (MIFPA) [Minn. Stat. §§ 260.751 to 260.835] in 1985 to strengthen and expand parts of the federal act. The Minnesota law and its amendments emphasize the state’s interest in supporting the preservation of the tribal identity of an Indian child, and recognize tribes as the appropriate entities to provide direction to the state as to the best interests of tribal children. As authorized by 25 U.S.C. § 1919 and Minn. Stat. § 260.771, subd. 5, the Minnesota Tribal/State Agreement (Agreement) was developed to provide policies and procedures for:

- Maximizing the participation of tribes in decisions regarding Indian children
- Addressing barriers to implementing those services for the protection of Indian families and children
- Preventing foster placements and non-Indian adoptions.

The Agreement is directed at child welfare activities of the state through its local social services systems and attempts to impact the state’s judicial systems. It represents the development of a comprehensive working relationship between each of the 11 Minnesota tribes and the Minnesota Department of Human Services for the delivery of child welfare services.

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The purpose of the Agreement is to protect the long-term best interests of Indian children and families, as defined by the tribes and their social service agencies by maintaining the integrity of the Indian family, extended family and tribal communities. The best interests of Indian children are inherently tied to the concept of belonging, which is key to the theme of short-term and permanency planning. Belonging can only be realized for Indian children by recognition and enhancement of the support networks that exist in a child's extended family, clan or tribal systems. Permanency develops from identification with these systems through a sense of connectedness and continuity over time.

The two laws and the Tribal/State Agreement apply specifically to the provision of child welfare services to Indian children. The federal Indian Child Welfare Act takes precedence over all state laws and all other federal laws that may conflict regarding Indian child welfare cases, unless the state law or other federal laws provide a higher standard of protection for the rights of parent(s) or Indian custodian(s). [25 U.S.C. § 1921] The goal is to ensure that Indian children remain with their parents whenever possible. If that is not possible, the order of placement preference indicates that children must be placed with the extended family, an Indian custodian of a child's tribe, an Indian person, or with a person of Indian descent. Tribal input is critical in any decision regarding their children.

1.2 Authority Cited in Manual

1. Pub. Law 83-280, codified at 28 U.S.C. § 1360; 18 U.S.C. section 1162; 25 U.S.C. §§ 1321-1326 (Civil and Criminal Jurisdiction on Reservations).
2. Pub. Law 95-608, codified at (Indian Child Welfare Act of 1978) 25 U.S.C. §§ 1911-1922.
3. Pub. Law 96-272, amending 42 U.S.C. § 620 et seq.; 42 U.S.C. § 670 et seq. (Foster Care and Adoption Assistance Act of 1980).
4. Minn. Stat. §§ 260.751 to 260.835 (1997) (Minnesota Indian Family Preservation Act).
5. 2007 Tribal/State Agreement

1.3 Scope

This manual applies to both county social service agencies and private child-placing agencies.

1.4 Summary of the Indian Child Welfare Act

The basic intent of the Indian Child Welfare Act (ICWA) is to protect the integrity of Indian tribes through protection of Indian families. ICWA seeks to prevent the removal of Indian children from their family homes and placement away from extended family and tribal systems. ICWA accomplishes this goal by:

- Requiring that active efforts are made to identify a child's membership or eligibility for membership in any federally recognized Indian tribe.
- Recognizing the jurisdiction of tribal courts.
- Providing for the dismissal or mandatory transfer of cases where the tribe has exclusive jurisdiction.

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- Providing for transfer of jurisdiction over Indian child welfare cases to tribal court upon request in all cases, barring good cause to the contrary, as defined under the ICWA and the 2007 Tribal/State Agreement.
- Requiring that states give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings.
- Requiring state courts, in the placement of Indian children and in the termination of parental rights of Indian children, to observe the highest standards applicable to prevent the destruction of Indian families. These standards apply to:
 - a. The level of effort required to prevent placement.
 - b. The level of effort required to reunify children with families.
 - c. The level of evidence required in judicial proceedings.
 - d. The requirement for a qualified expert witness under the ICWA.
- Requiring compliance with the order of preference of Indian children as set forth in the ICWA, unless the tribe has adopted a different order of preference.
- Requiring that the prevailing social and cultural standards of the local Indian community be applied in placement decisions.
- Requiring notice to tribe(s), Indian parent(s), and Indian custodian(s) of state court child custody proceedings.
- Providing for the right of parent(s), Indian custodian(s), and/or tribe(s) of an Indian child to intervene in the state court proceedings.
- Providing for court appointed counsel to represent indigent parent(s), or Indian custodian(s) of an Indian child.
- Providing protections for parent(s) who voluntarily place their child in foster care or terminate parental rights.
- Requiring tribal and parental access, in accordance with applicable law, to records maintained by the state.
- Recognizing tribal licensing and/or approval of standards for foster homes.
- Funding of tribal social services to Indian families and their children.
- Providing for a process to invalidate the state court's action when ICWA has been violated.
- Assisting Indian adults who were adopted as children to establish tribal affiliation.

The 17 statements above are intended to be a summary and restatement of ICWA and are not intended to amend ICWA in any way.

1.5 Summary of the Minnesota Indian Family Preservation Act

The Minnesota Indian Family Preservation Act expands on and strengthens the federal ICWA by:

- Requiring notification and providing for intervention by tribal social services when an Indian child is at risk of placement.
- Establishing greater emphasis of identification of an Indian child's tribe(s) and extended family members for placement purposes.

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- Requiring the provision of prevention services that address the conditions in a child's home which could lead to placement.
- Requiring notice and providing for intervention by the tribe(s) in case of voluntary placement.
- Providing for tribal notice of, and the right to participate in, administrative reviews of voluntary foster placements.
- Establishing time limits for the local social services agencies to return an Indian child to its parent(s) or Indian custodian(s) upon receipt of a demand for immediate return.
- Requiring notice to the tribe(s) and access to agency records when the court finds an Indian child has committed a juvenile status offense.
- Re-enforcing that orders of a tribal court have the same force and effects as orders of state court.
- Clarifying that financial responsibility for the cost of placement or social services ordered by a tribal court shall be determined by the local social services agency, pursuant to Minn. Stat. § 256G.09.
- Providing an opportunity for the local social service agency to be heard in tribal court hearings.
- Providing that a copy of a court decree regarding the adoptive placement of an Indian child be provided to the tribe(s).
- Requiring DHS to provide any information to or for an adopted child, adoptive parent(s), Indian custodian(s), or guardian(s), which may be necessary to establish tribal membership.
- Requiring DHS to obtain and maintain records on Indian children in residential facilities, including the extent of compliance with placement preferences of the ICWA.
- Providing grants to tribe(s) and Indian organizations to serve Indian children and families, and to implement the Minnesota Indian Family Preservation Act.

The 14 statements above are intended to be a summary and restatement of MIFPA and are not intended to amend MIFPA in any way.

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Chapter 2 General Indian Child Welfare Provisions

2.1 Definitions

1. Acknowledge: Any action on the part of the unwed father to hold himself out as the biological father of an Indian child. “Acknowledged father” also means a father as defined by tribal law or custom.
2. Adoptive placement: The permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.
3. Agreement compliance contact: A person designated by a tribe and a person designated by the department to represent their respective entities as a liaison between the tribe and the department in implementation of the 2007 Tribal/State Agreement, Part 1, E.3 at 9.
4. Active efforts: A rigorous and concerted level of casework that uses the prevailing social and cultural values, conditions and way of life of the Indian child’s tribe to preserve a child’s family and to prevent placement of an Indian child and, if placement occurs, to return a child to their family at the earliest time possible. “Active efforts” sets a higher standard than “reasonable efforts” to preserve a family, to prevent break-up of a family, and to reunify a family, as defined by Minnesota law (see Minn. Stat. § 260.012(c) (2006).

Active efforts require acknowledging traditional helping and healing systems of an Indian child’s tribe and using these systems as the core to help and heal an Indian child and family (see 25 U.S.C. § 1912(d); Department of the Interior Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings, hereafter “Bureau of Indian Affairs Guidelines,” 44 Fed. Reg. No. 228, 67,584, 67,595 at D.2 (Nov. 26, 1979).

Before a county social service agency makes a decision that will affect a child’s well-being, or when an out of home placement is contemplated, the county agency must seek guidance from the Indian child’s tribe on how that family is structured, how the family can seek help, what family and tribal resources are available and what barriers the family faces that could threaten its preservation. County social service agency staff should work with a child’s tribe and family to develop an alternative plan to placement.

Active efforts are required throughout the county social service agency’s involvement with a family. The 2007 Tribal/State Agreement identifies the following as potential active efforts:

- a. Notifying and requesting the involvement of the tribe(s) or designated tribal representative(s) to participate in a case at the earliest point possible and actively soliciting their advice throughout the case.
- b. Requesting that tribally designated representative(s) with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the tribal community, evaluate a

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- family's circumstances and assist in developing a case plan that uses tribal and Indian community resources.
- c. Providing concrete services and access to both tribal and non-tribal services including, but not limited to, financial assistance, food, housing, health care and transportation when needed. Such services are to be provided in an on-going manner throughout the case to directly assist a family in accessing and engaging in those services.
 - d. Arranging visitation (including transportation assistance) that will take place, whenever possible, in the home of the parent(s), Indian custodian(s), other family members, or in some other non-institutional setting, to keep a child in close contact with parent(s), siblings, and other relatives, regardless of their age, and to allow a child and those with whom they are visiting to have natural and unsupervised interaction whenever consistent with protecting a child's safety. When a child's safety requires supervised visitation, consulting with tribal representative(s) to determine and arrange the most natural setting that ensures a child's safety.
 - e. Consulting with a tribe(s) about the availability of tribal support for a family, including traditional and customary practices, as well as other tribal services, and using these tribally based family preservation and reunification services whenever available. If no tribally based services are available, referring parent(s), Indian custodian(s), and children to other Indian agencies for services.
 - f. Consulting with extended family members for help and guidance, and using them as a resource for a child. If there is difficulty working with a family, seeking assistance from an agency, including tribal social services, with expertise in working with Indian families.
 - g. Using available tribal, other Indian agency and state resources that are appropriate for a child and family.
 - h. Providing services to extended family members to allow them to be considered for placement of a child. See generally *In re the Welfare of M.S.S.*, 465 N.W.2d 412 (Minn. Ct. App. 1991). [25 U.S.C. § 1912 (d)]
5. Best interests of an Indian child: Compliance with and recognition of the importance and immediacy of family preservation, using tribal ways and strengths to preserve and maintain an Indian child's family. The best interests of an Indian child will support a child's sense of belonging to family, extended family, clan and tribe. Best interests of an Indian child are interwoven with the best interests of an Indian child's tribe. Best interests must be informed by an understanding of the damage that is suffered by Indian children if family and child tribal identity and contact are denied. Congress has not imposed a "best interests" test as a requirement in Indian Child Welfare Act child custody proceedings. See Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, 67,592 at D.3. (Nov. 26, 1979). See generally *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989); *In re the Adoption of M.T.S.*, 489 N.W.2d 285, 288 (State of Minnesota in Court of Appeals 1992). [25 U.S.C. § 1902; 2007 Tribal State/Agreement, Part I, E.5 at 11]
6. Case Plan: A written plan prepared by a county social service agency jointly with the parent(s), Indian custodian or guardian of a child, a child's tribe and in consultation with the guardian ad litem and a child's foster care providers, or representative of the residential facility, and where appropriate, a child. If a child is in placement solely, or in part, due to their emotional disturbance, the mental

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health provider shall be included. This document should outline the requirements set forth in Minn. Stat. § § 245.4871, subds. 19 or 21; 245.492, subd. 16; 256B.092; 256E.08; 260C.212, subd. 1; or 626.556, subd. 10 (2007 Supp.), whichever is applicable; and Minn. Rules of Juvenile Protection, Rule 37. In addition, the parties agree that the focus shall be on family preservation and the elimination of issues underlying a child protection proceeding.

7. Child custody/placement proceeding: Foster care placement, termination of parental rights, preadoptive placement, adoptive placement, or transfer of legal custody to a member of an Indian child's extended family, long-term foster care, or any other placement determination referenced in Minn. Stat. § 260C.201 (2006). Such term or terms shall not include a placement based on an act which, if committed by an adult would be deemed a crime, or on an award in a divorce proceeding of custody to one of the parents. However, as set forth in the Indian Child Welfare Act, the term or terms do apply to all other domestic relations proceedings in which an Indian child is the subject of a child custody proceeding, as defined in the Indian Child Welfare Act, including but not limited to, the transfer of legal custody of an Indian child to a member of their extended family. Such terms include placements based on juvenile status offenses. [Minn. Stat. § 260.755, subd. 3 (2006)] Such terms also include any third party custody or de facto custody actions wherein custody of an Indian child may be transferred to any individual other than an Indian child's parent. Minn. Stat. § 257C.02 (a) (2006); *Gerber v. Eastman*, 673 N.W.2d 854 (State of Minnesota in Court of Appeals 2004); *In re the Custody of A.K.H.*, 502 N.W.2d 790 (State of Minnesota in Court of Appeals 1993).
8. Data: All records, files, (including microfilm or computer files), case notes, and all other information regarding an Indian child regardless of whether such files containing the information are open or closed.
9. Demand: A written and notarized statement signed by a parent or Indian custodian of a child that requests the return of a child voluntarily placed in foster care. [Minn. Stat. § 260.755, subd. 5]
10. Designated tribal representative: An individual designated in writing by an Indian child's tribe to represent the tribe in child custody proceedings.
11. Domicile: A person's true, permanent home, or the place to which s/he intends to return even though actually residing elsewhere; a child's domicile is determined by the domicile of his/her parent(s), even if a child has never resided at the parent(s)' domicile. "Domicile" is not necessarily synonymous with "residence," and one can reside in one place but be domiciled in another. For adults, domicile is established by physical presence in a place connected with a certain state of mind concerning ones' intent to remain there. Since most minors are legally incapable of forming the requisite intent to establish a domicile, their domicile is determined by that of the custodial parent. On occasion, a child's domicile will be in a place where they have never been. [*Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989)]
12. Emergency: A condition caused by an action or inaction by an Indian child's parent or Indian custodian that puts a child at risk of imminent physical damage or harm. The emergency only exists

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while there is an immediate risk, and once that passes, the emergency no longer exists. [25 U.S.C. § 1922]

13. Extended family: Defined by the law or custom of an Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached age 18 and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent. [See also Definition No. 29 "Relative", 25 U.S.C. § 1903 (2)] [25 U.S.C. § 1903]
14. Foster placement: Any and all initial and subsequent actions involving removal of an Indian child from their parent or Indian custodian for temporary placement in a foster home or institution, or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where the parental rights have not been terminated.
15. Good cause not to follow placement preferences: For the purposes of foster care, pre-adoptive or adoptive placement, or other permanency placements, a determination of "good cause" not to follow the order of preferences set out in the Act should be limited to a finding by the court of one or more of the following considerations:
 - a. The request of biological parents, or a child when they are of sufficient age, where appropriate. If the sole basis for preference of the parent or child is to avoid application of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, the court should reject the preference;
 - b. The extraordinary physical or emotional needs of a child requiring highly specialized treatment services as established by the testimony of a qualified expert witness and, if necessary, an expert witness as defined in the 2007 Tribal/State Agreement, Part I, E.33 at 16-18; or
 - c. Unavailability of suitable families for placement after a diligent search consistent with the active efforts standard has been completed for families meeting the placement preference criteria.
Adapted from the Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, 67,595 at F.3 (Nov. 26, 1979).

Note: Bonding or attachment to a foster family alone, without the existence of any of the above conditions, is not good cause to keep an Indian child in a lower preference or non-preference home. See *Adoption of M.T.S.*, 489 N.W.2d 285 [State of Minnesota in Court of Appeals 1992]

The burden of establishing the existence of good cause to modify placement preferences shall be on the party urging that the preferences not be followed. See *The Bureau of Indian Affairs Guidelines*, 44 Fed. Reg. No. 228, 67,584, 67,595 at F.3 (Nov. 26, 1979).

16. Good cause not to transfer jurisdiction to tribal court. Under Minnesota case law, "transfer of jurisdiction over Indian child custody matters to tribal authorities is mandated by the Indian Child Welfare Act, whenever possible."

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In re the Matter of the Welfare of B.W., 454 N.W.2d 437, 446. [State of Minnesota in Court of Appeals 1990]

Tribes are parties to child custody proceedings under Minnesota Rules of Juvenile Protection Procedure as follows:

[Minn. Rules of Juvenile Protection P. 21.01, subd. 1(c); see also Minn. Stat. § 260.761, subd. 6]

- a. Except in emergencies, the following child custody proceedings must be transferred to tribal court:
 - (1) Any such proceeding involving a ward of tribal court; or
 - (2) Any such proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe.

- b. Except in emergencies, upon petition of a parent, an Indian custodian or an Indian child's tribe, any child placement/custody proceeding involving an Indian child who neither resides nor is domiciled within the reservation of such child's tribe, must be transferred to the tribal court, unless:
 - (1) Good cause to the contrary exists for the transfer. Good cause is a fact-specific inquiry to be determined on a case-by-case basis. If a petition to transfer proceedings is filed, the court may find good cause to deny the petition if any one of the following circumstances exists:
 - (a) The Indian child's tribe does not have a tribal court as defined by the Indian Child Welfare Act to which the case can be transferred, and no other tribal court has been designated by the Indian child's tribe. Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, 67,595 at C.3 (a) (Nov. 26, 1979). The Indian Child Welfare Act defines "tribal court" broadly to include courts and "any other administrative body of a tribe which is vested with authority over child custody proceedings." [25 U.S.C. § 1903(12)]
 - (b) The petition is inexcusably filed when the proceeding is already at an advanced stage. Fundamental tribal values may guide the timing by a tribe to petition for transfer; or
 - (c) 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, distance alone should not defeat transfer.
 - (2) Either parent objects to the transfer, or
 - (3) The tribal court declines the transfer. [25 U.S.C. § 1911(b)]
Socio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists. The parties agree that, whenever a local social service agency or any other party

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opposes a transfer of jurisdiction based on good cause, such party has the burden of establishing good cause not to transfer, and must provide a written explanation of its opposition to the tribe(s) and to the parties who support the transfer. See Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, 67,595 at .3(b)(i) – (iv), (c), (d) (Nov. 26, 1979) (as modified)

17. ICWA: The Indian Child Welfare Act. [25 U.S.C. §§ 1901-1963]
18. ICW compliance resolution process: The process set forth in the 2007 Tribal/State Agreement to address allegations of non-compliance with the Indian Child Welfare Act by a local social service agency regarding an Indian child. [2007 Tribal/State Agreement, Part II, I.3. at 25]
19. Indian Child Welfare Act contact person: A person(s) designated by a tribe, in writing, to receive formal notice regarding Indian child custody or placement proceedings.
20. Imminent physical damage or harm: A threat of immediate physical injury; emotional harm to a child is not sufficient.
21. Indian: Any person who is a member of any Indian tribe, or who is an Alaskan Native and a member of a regional corporation as defined in the Alaska Native Claims Settlement Act. [43 U.S.C. § 1606; 25 U.S.C. § 1903 (3); Minn. Stat. § 260.755, subd. 7 (2006)]
22. Indian child: Any unmarried person who is under age 18 and is either a member of an Indian tribe, or eligible for membership in an Indian tribe. [Minn. Stat. § 260.755, subd. 8 (2006)]

A termination of parental rights does not sever a child’s membership, or eligibility for membership, in a tribe or other rights as an Indian.

The definition of an Indian child applies without exception in any child custody proceeding. Whether an Indian child is part of an Indian family or has established a connection to their tribe is not a consideration in determining the applicability of the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act to an Indian child. “The existing Indian family” exception or doctrine is explicitly rejected in Minnesota. [Minn. Stat. § 260.771, subd. 2 (2007)]

A determination by a tribe that a child is a member or eligible for membership is conclusive. [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, 67,586 (Nov. 26, 1979), See In re S.N.R., 617 N.W.2d 77, 84 (State of Minnesota in Court of Appeals 2000)]

23. Indian child’s tribe: The tribe in which an Indian child is a member or eligible for membership. For an Indian child who is a member of, or eligible for membership in, more than one tribe, the determination of a child’s tribe is best made by the respective tribes with whom a child is a member or eligible for membership. If a determination has not been made, or if a dispute exists between the tribes, the court shall designate the tribe with which a child has more significant contacts. Such a

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determination shall not prohibit any other interested tribes from participating in child custody proceedings. Any such participating tribe should have access to information regarding the family. [25 U.S.C. § 1903 (5); Minn. Stat. § 260.755, subd. 9 (2006)]

The extent of a child's contact with a tribe shall not be used to challenge a determination that a child is an Indian child. [Minn. Stat. § 260.771, subd. 2 (2007)]

24. Indian custodian: Any 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 such child. [U.S.C. § 1903 (6); Minn. Stat. § 260.755, subd. 10 (2006)]
25. Indian organization: Any group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians. [U.S.C. § 1903 (7) Minn. Stat. § 260.755, subd. 11(2006)]
26. Indian tribe: Any 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 Alaska Native village as defined in 43. [U.S.C. § 1602(c). U.S.C. § 1903(8); Minn. Stat. § 260.755, subd. 12 (2006)]
27. Legal custody: The legally enforceable duty, responsibility, and authority to provide care and control of a child as interpreted by the Minnesota juvenile court system or tribal court when transferring legal responsibility for care from a parent, Indian custodian, or legal guardian to the local social service agency, court services agency, or individual pursuant to a court order.
28. Local social services agency: The local agency under authority of the county welfare or human services board or county board of commissioners that is responsible for human services. [Minn. Stat. § 260.755, subd. 13 (2006)]
29. MIFPA: The Minnesota Indian Family Preservation Act. [Minn. Stat. §§ 260.751-260. 835 (2006)]
30. Parent: Any biological parent or parents of an Indian child, or any Indian person who has lawfully adopted an Indian child, including, but not limited to, adoptions under tribal law or custom. This definition does not include an unmarried father whose paternity has not been acknowledged or established. [5 U.S.C. § 1903 (9); Minn. Stat. § 260.755, subd. 14 (2006)]
31. Permanency planning for Indian children: A process designed to help Indian children live in their own families as defined by the Indian Child Welfare Act. This process should offer continuity of relationships with nurturing parents; extended family members, regardless of age; and tribal caregivers. This process is designed to provide a child an opportunity to develop and maintain lifetime familial relationships. When Indian children are unable to live with their parents or Indian custodians, permanency planning may include transfer of permanent legal and physical custody to a relative, long-term foster care, customary/cultural adoptions, or adoption in district court.

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Customary/cultural adoptions include traditional adoptions recognized by tribal practice, custom or tradition. The traditions, customs and values of many tribes do not accept actions intended to terminate parental rights or other actions that can effect a severing of the parent/child relationship. All permanency options have the potential to extinguish the relationship between a parent and child.

32. Placement preferences: An Indian child's tribe's order of preference by resolution, public acts, records or judicial proceedings, shall be followed by the agency or court effecting the placement so long as the placement is the least restrictive setting appropriate to the particular needs of a child. [25 U.S.C. § 1915(c)]

Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting that most approximates a family, and in which a child's special needs, if any, may be met. Children shall also be placed within reasonable proximity to their home, taking into account any special needs. The following will apply:

- a. In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement in the following descending order:
 - (1) A member of an Indian child's extended family
 - (2) A foster home licensed, approved, specified or acknowledged by an Indian child's tribe
 - (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority
 - (4) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet an Indian child's needs. [25 U.S.C. § 1915(b)]
- b. In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement in the following descending order:
 - (1) A member of an Indian child's extended family
 - (2) Other members of an Indian child's tribe
 - (3) Other Indian families. [25 U.S.C. § 1915(a)]

Out-of-home placement of Indian children with their siblings or half siblings in a non-relative, non-Indian home does not meet placement preference requirements. This type of placement does not constitute a placement with "family" or with "relatives." A child's family, relatives or kinship relationships shall be determined in regard to the parent(s) and/or Indian custodian(s), not to other children in the placement home.

33. Pre-adoptive placement: The temporary placement of an Indian child in a foster home or institution after termination of parental rights, but prior to or in lieu of adoptive placement. [25 U.S.C. § 1903(1)(iii)]
34. Qualified expert witness: The Indian Child Welfare Act prohibits foster care placement or termination of parental rights unless a district court determines by clear and convincing evidence beyond a reasonable doubt, respectively, after hearing testimony of qualified expert witnesses, that

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continued custody of a child by a parent or Indian custodian is likely to result in serious emotional or physical damage. [25 U.S.C. § 1912(e),(f)]

The qualifications of a tribally designated qualified expert witness shall not be subject to challenges in Indian child custody proceedings. The following shall apply:

- a. When use of a tribally designated qualified expert witness is not possible, persons with the following expertise and capacities will meet requirements for a qualified expert witness. While not every qualified expert witness will demonstrate knowledge and understanding of each of these criteria, consideration of these criteria should be made when establishing qualified expert witnesses to offer testimony concerning whether continued custody of a child by a parent or Indian custodian is likely to result in serious physical or emotional damage to a child:
 - (1) Membership in a child's tribe or significant experience with that tribe;
 - (2) Knowledge and understanding of the meaning of membership in a child's tribe;
 - (3) Knowledge and understanding of the meaning of clan relationships and extended family relationships in a child's tribe;
 - (4) Knowledge and understanding of the meaning of traditional and contemporary child rearing practices within a child's tribe;
 - (5) Knowledge and understanding of traditional disciplinary measures used within a child's tribe;
 - (6) Knowledge and understanding of ceremonial and religious practices and cultural traditions within a child's tribe;
 - (7) Knowledge and understanding of medicine and traditional healing of a child's tribe;
 - (8) Knowledge and understanding of the effect of acculturation or assimilation within a child's tribe.

- b. The criteria above inform, and do not supplant, current Minnesota law, which defines a "qualified expert witness" as:
 - (1) A member of an Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices;
 - (2) A lay expert witness who has substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within an Indian child's tribe; or
 - (3) Professional persons who have substantial education and experience in their area of specialty, and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community.

See in re the Custody of S.E.G., 521 N.W.2d 357, 364-65 (Minn. 1994) [citing with modification the Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, 67,595 at D.4. (b) (Nov. 26. 1979); see also Minn. Rules 9560.0221, subpart 3.G. (2005)]

35. Reservation: Indian country as defined in 18 U.S.C. § 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or

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individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. [18 U.S.C. § 1151; 25 U.S.C. § 1903 (10); Minn. Stat. § 260.755, subd. 18 (2006)]

36. Residence: The place where a person currently lives or has established a place of abode, provided that if the law or custom of an Indian child's tribe defines this term differently, the tribal definition shall control. [2007 Tribal/State Agreement, Part I, E.35 at 18]
37. Secretary: The secretary of the Interior. [25 .S.C. § 1903 (11); Minn. Stat. § 260.755, subd. 19 (2006)]
38. State court: Any juvenile or family court of the state of Minnesota that has jurisdiction over child custody proceedings.
39. Termination of Parental Rights (TPR): Any action resulting in the termination of the parent-child relationship. No order for involuntary termination of parental rights shall be made in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of a qualified expert witness(s) that the continued custody of a child by a parent or Indian custodian is likely to result in serious emotional or physical abuse. In addition, the petitioner must prove beyond a reasonable doubt one or more grounds for termination of parental rights pursuant to state statute. Termination of parental rights includes any voluntary or involuntary action as part of a step-parent adoption, and an adoption consent pursuant to Minn. Stat. § 259 (2006). [25 U.S.C. § 1903(1)(iii); 25 U.S.C. § 1912(f) 25 U.S.C. § 1913 Minn. Stat. § 260C.301 (2006)]
40. Transfer of permanent legal custody to a relative: The permanent transfer of legal and physical custody of an Indian child to an extended family member. [Minn. Stat. § 260C.201, subd. 11(d) (2006)]
41. Trial home visit: The return of a child to the care of a parent or Indian custodian from whom a child was removed, for a period not to exceed six months. [Minn. Stat. § 260C.201, subd. 1(3) (2006)]
42. Tribal court: A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings. When a tribe designates the tribal court of another tribe to act on its behalf, the term shall also include the tribal court of the other tribe. [25 U.S.C. § 1903(12)]
43. Tribal social services agency: A tribal program or a tribe's agency, however named, with responsibility for provision of social services to Indian families and children. [Minn. Stat. § 260.755, subd. 21 (2006)]
44. Voluntary foster placement: An out-of-home foster placement by a social service agency away from the home of a parent, Indian custodian or legal guardian of an Indian child where a parent may have a child returned upon demand. Voluntary foster placement requires court certification as well as a

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signed voluntary placement agreement that specifies a child's legal status and spells out the rights and obligations of a child, parent(s) or Indian custodian and agency, including the duty of an agency to return a child upon demand. The consent must be executed in writing and recorded before a judge in a court of competent jurisdiction, and must be accompanied by a presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by a parent or Indian custodian. The court shall also certify that either a parent or Indian custodian fully understood the explanation in English, or that it was interpreted into a language that was understood. [25 U.S.C. § 1913(a),(b); Minn. Stat. § 260.755, subd. 22 (2006)]

45. Voluntary relinquishment: The free will, non-coerced consent of a parent or Indian custodian to permanently give up custody of a child, to have parental rights terminated and have a child placed for adoption. The consent must be executed in writing and recorded before a judge in a court of competent jurisdiction, and must be accompanied by a presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by a parent or Indian custodian. The court shall also certify that either a parent or Indian custodian fully understood the explanation in English, or that it was interpreted into a language that a parent or Indian custodian understood. [25 U.S.C. § 1913]
46. Ward of tribal court: An Indian child who is so considered by a tribal court. The ward of a tribal court is not necessarily the same as a "state ward" in which a child is free for adoption. An Indian child may be a ward of a tribal court without having parental rights terminated.

2.2 Confidentiality of Records/Information

Any obligation by the local social service agency to disclose or transmit confidential records, documents or information to a tribe, or to involve a tribe in case planning activities that necessitate disclosure of private or confidential information is strictly conditioned upon:

1. Federal or state laws that require or authorize the department or a local social service agency to disclose private or confidential information to a tribe, it being understood that in order to achieve the purposes of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, a tribe must have access to all data, including confidential information regarding an individual with respect to its members; or
2. Entry of an order, by a state, federal, or tribal court with jurisdiction over the parties and the subject matter, which authorizes disclosure of confidential information to tribes.

2.3 Notice

If joint assessments or investigations do not occur, and when a local social service agency or private child-placing agency determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and requires continued involvement of an agency with a child for a period in excess of 30 days, the agency shall send notice of the condition and the initial steps taken to remedy it to an Indian child's tribal social service agency within seven days of a determination. [Minn. Stat. § 260.761, subd. 2 (2006)]

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At and any subsequent stage of its involvement with an Indian child, an agency shall, upon request, give a tribal social service agency full cooperation, including access to all files concerning a child. [Adapted from 2007 Tribal/State Agreement, Part II, F. at 23]

2.4 Inter-Agency Coordination

To help ensure coordination, understanding and implementation of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, the department strongly encourages local social service agencies whose service areas include a tribe, or have at least one child who is a member of a tribe on their case load, to invite tribal representation on their multi-disciplinary Child Protection Team. [Tribal/State Agreement, Part II, J Local Social Service Agency Staff Assignments]

2.5 Local Social Service Agency Staff Assignments

Local social service agencies should seek input from tribes in the assignment of social workers to cases involving Indian children, so that workers will be assigned who are sensitive to social and cultural standards and tribal issues.

2.6 Notice of Potential Out-of-Home Placement

When a local social service agency or private child-placing agency determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and requires continued involvement of an agency with a child for a period in excess of 30 days, an agency shall send notice of the condition and of the initial steps taken to remedy it to an Indian child's tribal social service agency within seven days of a determination. [Minn. Stat. § 260.761, subd. 2]

Tribes must be notified timely by registered mail with return receipt requested, so that tribes may participate in a child custody proceeding, or may choose to exert tribal jurisdiction over a child. If the identity or location of a parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner. [25 U.S.C. §§1911(b) and 1912(a)]

2.7 Involuntary Placements

1. Notice requirements. In any involuntary placement of an Indian child, a local social service agency shall provide notice as follows:
 - a. In any involuntary child custody proceeding, a local social service agency shall make inquiries to determine if a child is a member of an Indian tribe, or if a parent of a child is a member of an Indian tribe, and a child is eligible for membership in an Indian tribe;
 - b. In any involuntary Indian child custody proceedings, notice of proceedings shall be sent to parents and Indian custodians, if any, and to any tribes that may be an Indian child's tribe, by registered mail with return receipt requested;

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- c. The tribe(s), parent(s) or Indian custodian(s) receiving notice of a child custody proceeding has the right, upon request, to be granted 20 days, or such additional time as may be permitted under state law, from the date when a notice was received to prepare for a proceeding;
 - d. The original or a copy of each notice sent shall be filed with the court, together with any return receipts or other proofs of service;
 - e. Notice may be personally served on any person entitled to receive notice in lieu of mail service;
 - f. If parents or Indian custodians appear in court without an attorney, the court will inform them of the right to appointed counsel, the right to request that the proceedings be transferred to tribal court, or to object to such transfer, the right to request additional time to prepare for a proceeding, and the right (if parent(s) or Indian custodian(s) is not already a party) to intervene in proceedings; and
 - g. If the court or a petitioning party has reason to believe that a parent(s) or Indian custodian(s) is not likely to understand the contents of a notice because of lack of adequate comprehension of written English, a copy of the notice shall be sent to the Bureau of Indian Affairs agency nearest to the residence of that person, requesting that Bureau of Indian Affairs personnel arrange to have a notice explained in the language that is best understood. [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.5 (Nov. 26, 1979)]
2. Content of notice. Notices of involuntary placements required by this paragraph shall be written in clear and understandable language, and shall include the information described in Appendix A: Content of Notice in Involuntary Placements.
 3. Time limits and extensions
 - a. A tribe, parent or Indian custodian entitled to notice of a child custody proceeding has a right, upon request, to be granted an additional 20 days from the date a notice was received to prepare for participation in the proceeding.
 - b. The proceeding may not begin until all of the following dates have passed:
 - (1) Ten days after a parent or Indian custodian (or secretary when a parent or Indian custodian is unknown to the petitioner) has received notice;
 - (2) Ten days after an Indian child's tribe (or secretary if an Indian child's tribe is unknown to the petitioner) has received notice;
 - (3) Thirty days after a parent or Indian custodian has received notice, if a parent or Indian custodian has requested an additional 20 days to prepare for a proceeding; and
 - (4) Thirty days after an Indian child's tribe has received notice, if an Indian child's tribe has requested an additional 20 days to prepare for a proceeding.
 - c. The time limits listed in this section are the minimum time periods required by the Indian Child Welfare Act. A court may grant more time to prepare when state law permits. [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.6 (Nov. 26, 1979)]

2.8 Voluntary Placement Notice

When an Indian child is voluntarily placed in any out-of-home placement, the local social service agency involved in the decision to place a child shall give notice of the placement to a child's parent(s), Indian

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custodian(s), and tribal social services agency or designated tribal representative within seven days of placement, excluding weekends and holidays.

If a private child-placing agency makes a temporary voluntary out-of-home placement pending a decision on adoption by a parent, notice of the placement shall be given to a child's parent(s), Indian custodian(s), and tribal social service agency upon the filing of a petition for termination of parental rights, or three months following the temporary placement, whichever comes first. [Minn. Stat. § 260.765, subd. 2]

2.9 Private Child Placing Agency Notice of Potential Pre-adoptive or Adoptive Placement

When a private child-placing agency determines that an Indian child is in a dependent or other condition that could lead to a pre-adoptive or adoptive placement, the agency shall send notice of the condition to an Indian child's tribal social service agency within seven days of a determination. The agency shall include in the notice the identity of birth parents and child, absent written objection by the birth parents. The private child-placing agency shall inform birth parents of an Indian child of any services available to an Indian child through a child's tribal social service agency, including child placement services, and should additionally provide the birth parents of an Indian child with all information sent from the tribal social service agency in response to the notice. [Minn. Stat. § 260.761, subd. 3]

2.10 Notice of Good Cause Determination

Any time a determination is made that there is good cause to place an Indian child outside of the placement preferences contained in the ICWA, or otherwise established by a tribe, a local social service agency must promptly send notice thereof to:

1. Parent(s) or Indian custodian(s);
2. Tribe(s);
3. Child, if of sufficient age; and
4. Any extended family members who have sought placement.

2.11 Return of Child from Placement – Notice

Whenever a placement ends and a child is returned to the custody of parent(s) or Indian custodian(s), a local social services agency must notify:

1. Any other parent(s) whose parental rights have not been terminated;
2. Any other Indian custodian(s) of a child;
3. A child's tribe(s); and
4. Any other party to the placement proceeding. Such notification must be in writing and specify the name and address of the person to whom a child has been returned.

2.12 Notice of Administrative Review

Local social service agencies are required by P.L. 96-272, Social Security Act, Title IV, Part E., § 475(5)(B) (Foster Care and Adoption Assistance Act) to conduct administrative reviews of all voluntary and

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involuntary foster placements, and pre-adoptive placements of Indian children, not less than every six months, unless such reviews are conducted by tribal or state court. In any review of a foster or pre-adoptive placement of an Indian child, the local social service agency will notify a tribe, parent(s), Indian custodian(s), extended family members and a child, if over the age of 12. Notice must be sent at least fourteen 14 days prior to a review. Each tribe in which a child is eligible for membership will receive notice, and has a right to participate in the review and have access to all files and documents pertaining to placement. A child over the age 12 also shall have a right to participate in the review. In reviews of foster placements where parental rights have been terminated, parent(s) or Indian custodian(s) of a child will not be notified of the review and do not have a right to participate. [Adapted from Minn. Stat. § 260.765, subd. 3]

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Chapter 3 Jurisdictional Issues

3.1 Identification of a Child as an Indian Child

With respect to a child brought to its attention with a condition that could lead to out-of-home placement, a local social service agency or private licensed child-placing agency must determine:

1. Whether a child is an Indian child; and
2. If so, the identity of an Indian child's tribe. [Minn. Stat. § 260.761, subd. 1]

Local social service agencies shall ask each child and parent(s) if they are Indian, or have an ancestor who is Indian. Efforts to discover whether a child is Indian must be documented in the case record. The case record must clearly indicate all agency actions taken for identification purposes. The "ICWA Child Welfare Placement Preference and Considerations Documentation" form must be used for this purpose. Local social service agencies are strongly encouraged to use the ICWA/MIFPA Social Worker Checklist. Reasons to believe that a child is Indian might include, but are not limited to, the following:

1. Any party to a case, Indian tribe(s), Indian organization or public or private agency informs a worker that a child is Indian;
2. Any public or state licensed agency involved in child protection services or family support has discovered information that suggests that a child is Indian;
3. A child who is the subject of a proceeding gives a worker reason to believe they are Indian;
4. The residence or domicile of a child, their biological parent(s), or a child's Indian custodian is known by a worker to be, or is shown to be, a predominantly Indian community;
5. An officer of the court involved in a proceeding has knowledge that a child may be Indian. [Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.1(c)(i-v), (Nov. 26, 1979)]

Note: A child believed to be Indian must be treated as an ICWA eligible child until a tribe(s) indicates ineligibility for membership, or fails to respond to notices and requests by a local social service agency for eligibility determinations.

3.2 Verification of Membership

Local social service agencies and private child-placing agencies must seek verification of:

1. A child's and/or child's parent(s) membership status; and/or
2. Eligibility for membership from a child's tribe(s).

Contacts for verification of membership can be made with tribe(s)' social service agency by:

1. Telephone and/or FAX; or
2. An office visit to a tribal social service office(s); or
3. Written communication.

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All efforts to make contact regarding tribal identification and verification must be documented in writing and be part of the case record. If the tribe(s) is not known, an agency shall seek information regarding the name of a child's tribe(s) from the Bureau of Indian Affairs. [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.6 (Nov. 26, 1979); 25 U.S.C. § 1912(a)]

Note: Enrollment is the term commonly used to refer to the status of an Indian person as a part of a specific Indian tribe. However, while enrollment is the common means to establishing membership in an Indian tribe, it is not the only means. A person may have membership in a tribe without being enrolled according to criteria established by that tribe. These criteria may be established by tribal ordinance and may be unique to the tribe.

A determination by a tribe that a child is a member of or eligible for membership in a tribe is conclusive. This shall not be construed as an amendment of present tribal enrollment policies. [2007 Tribal/State Agreement, Part I, E.21 at 14]

3.3 Eligibility for Membership in More than One Tribe

Local social service agencies or private child-placing agencies shall provide all tribes with which an Indian child is eligible for membership, or has significant contacts, notice of any child custody/ placement proceedings, voluntary placements, and out-of-home placements, and make available all case information to assist a tribe(s) in making a recommendation regarding an Indian child. [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.2 (b) (Nov. 26, 1979)]

Note: All tribes with whom a child has significant contact have a vested interest in a child's future. Nothing shall prevent the input of all tribes into child custody/placement decisions, or considerations of all tribes for placement preference purposes. For a child who is eligible for membership in more than one tribe, the respective tribes will determine which tribe will be designated as an Indian child's tribe.

If there is a dispute between tribes, the court will determine the tribe, taking into account the following factors:

- 1 Length of residence on or near the reservation of each tribe, and frequency of contacts with each tribe;
- 2 Child's participation in activities of each tribe;
- 3 Child's fluency in the language of each tribe;
- 4 Whether there has been a previous adjudication with respect to a child by a court of one of the tribes;
- 5 Residence on or near one of the tribes' reservation by a child's relatives;
- 6 Tribal membership of custodial parent(s) or Indian custodian(s);
- 7 Interest asserted by each tribe in response to a notice; and
- 8 A child's self-identification.

[Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.2(c) (Nov. 26, 1979)]

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A determination shall not prohibit any other interested tribes from participating in child custody proceedings. Any such participating tribe should have access to information regarding a family. [Minn. Stat. § 260.755, subd. 9 (2006); 25 U.S.C. § 1903(5); 2007 Tribal/State Agreement, Part I, E.22 at 14. Determination of Tribal or State Court]

3.4 Determination of Tribal and State Court Jurisdiction

The Indian Child Welfare Act provides that tribes have exclusive jurisdiction “over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law.” [25 U.S.C. § 1911(a)]

In addition, “[w]here an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.”

Note: Jurisdictional conclusions, specifically those regarding “concurrent” jurisdiction under Public Law 280 do not include the Red Lake Nation reservation and Bois Forte Band of Chippewa, or any other tribe over which Public Law 280 jurisdiction has been retroceded by the state of Minnesota.

1. General requirements. Once a local social service agency has determined that a proposed Indian child custody proceeding is subject to the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and has identified an Indian child’s tribe(s) as required, a local social service agency, prior to initiating any such proceeding in court, shall contact a child’s tribe(s) to determine whether a child is a ward of tribal court and/or is domiciled on an Indian reservation. If either of these conditions is determined to exist, a local social service agency shall further determine whether a child is located on or off a reservation, and a local social service agency must comply with the provisions of paragraphs (2) through (6) of this section.
2. Child is a ward of tribal court:
 - a. Except in an emergency as described in subparagraph (2)(b), any proposed child custody proceeding involving an Indian child who is a ward of tribal court, regardless of the residence or domicile of a child, must be referred to the tribal social service agency for appropriate proceedings in tribal court. Local social service agencies are encouraged to inform parent(s) or Indian custodian(s) of the referral. Following the referral, a local social service agency should provide such technical or professional advice, support or cooperation as a tribal social service agency or designated tribal representative may reasonably request.
 - b. In case of an emergency involving an Indian child who is a ward of tribal court and who is located off a reservation, a local social service agency may initiate a removal or placement of a child by state court to prevent imminent physical damage or harm to a child.
3. Child resides or is domiciled within an Indian reservation and is not a ward of tribal court:
 - a. Except in an emergency as described in subparagraph (3) (b), a local social service agency shall refer any proposed child custody proceeding involving an Indian child to the tribal social service agency for appropriate proceedings in tribal court. This requirement applies to a child who

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resides or is domiciled within any Indian reservation where there is a tribal court vested with jurisdiction over child custody placement proceedings by the reservation's governing body. Local social service agencies are encouraged to provide such technical or professional advice, support and cooperation as a designated tribal representative may reasonably request.

- b. In case of an emergency involving an Indian child who resides or is domiciled within an Indian reservation, but who is located off the reservation, a removal or placement may be initiated in state court in the same manner as provided in paragraph (2)(b) for wards of tribal court.
4. Child is not a resident or domiciliary of an Indian reservation or a ward of tribal court:
 - a. Except in an emergency as described in subparagraph (4)(b), a local social service agency shall refer any proposed Indian child custody proceeding involving an Indian child to the tribal social service agency for appropriate proceedings in tribal court. This requirement applies to a child whose tribe has established a tribal court and vested it with jurisdiction over child custody placement proceedings but who is neither a resident nor a domiciliary of an Indian reservation. Local social service agencies shall give written notice of any referral pursuant to this subparagraph to a child's parent(s) or Indian custodian, designated tribal representative and tribal court, and shall make the referral unless:
 - (1) A local social service agency, after consulting with a designated tribal representative, concludes that there is good cause to the contrary;
 - (2) Either parent of a child objects, in writing, to the referral; or
 - (3) A designated tribal representative declines, in writing, to accept the referral or the tribal court declines, in writing, to accept jurisdiction over a proposed proceeding.

Nothing herein shall be construed to limit the right of tribes, parents or Indian custodians to seek transfer of jurisdiction to tribal court of any child custody/placement proceeding subsequently brought in state court, pursuant to this paragraph.

Any time a referral is declined pursuant to this subparagraph, a local social service agency should advise a parent or Indian custodian that the provisions of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act (including but not limited to the required placement preferences and notices) govern placements of a child, and that a child may not be placed in voluntary out-of-home placement unless the consent is validated by juvenile court.

If a referral is declined on the basis of a child's objection, a parent has the right to have the court review the objection. The burden of establishing good cause to the contrary is on the party who opposes the referral.

5. In case of an emergency involving an Indian child who is neither a ward of tribal court nor a resident or domiciliary of an Indian reservation, a removal or placement may be initiated in state court in the same manner as provided in subparagraph (2)(b) for wards of tribal court.
6. Police hold permitted. Except where a child's tribe has exclusive jurisdiction over such matters, nothing in this part (Determination of Tribal or State Court Jurisdiction) shall be construed to

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prohibit an Indian child from being taken into custody and placed in a shelter care facility or a relative's home by a peace officer pursuant to Minn. Stat. § 260.165, subd. 1(2) for up to 72 hours as permitted by Minn. Stat. § 260.171, subd. 2(d), so long as no CHIPS petition has been filed.

7. Child custody proceedings brought in violation of the Social Services Manual. If a local social service agency initiates a child custody proceeding or learns that an Indian child custody proceeding has begun in state court, which, according to the provisions of this part of the Social Services Manual (Determination of Tribal or State Court Jurisdiction), a local social service agency should have referred to the tribal social service agency to initiate appropriate action in tribal court, the local social service agency at its own initiative, or at the request of an Indian child's tribe(s), parent(s) or Indian custodian(s), shall immediately request the court to transfer the case to tribal court. Refusal by the local social service agency to seek such a transfer shall not be construed to limit the right of a child's tribe(s), parent(s) or Indian custodian to petition the court to transfer the case to tribal court pursuant to the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, the 2007 Tribal/State Agreement or this manual.

3.5 Local Social Service Agency Services in Tribal Court

The department recognizes its responsibility to give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that the United States and every state give full faith and credit to the public acts, records, and judicial proceedings of any other entity. [25 U.S.C. § 1911(d); Adapted from Minn. Stat. § 260.771, subd. 4]

The department recognizes that, to the extent a child is otherwise eligible for social services under Minnesota law, a tribal court may order placement through a local social service agency provided that notice and opportunity to be heard in tribal court is provided to the local social service agency, as required by Minn. Stat. § 260.771, subd. 4. This may require a local social service agency to provide services in connection with a placement as provided in similar placements by state courts.

When a case is transferred to a child's tribe, a local social service agency, if requested by a tribal social service agency, should assist parent(s) or Indian custodian(s) and the tribal social service agency to place a child in foster care, or make other arrangements as may be appropriate under the circumstances. [2007 Tribal/State Agreement, Part I, C.1]

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Chapter 4 General Practice Provisions

4.1 Tribal Involvement

To ensure that services that are compliant with the Indian Child Welfare Act are provided to Indian children and their families, local social service agencies should obtain guidance from tribal resources before actions are taken that could disrupt Indian children's relationships with family and tribe. At a minimum, best practices require that local social service agencies immediately notify designated tribal authorities and request their assistance to enter a reservation when a situation arises that requires assessment of or investigation into the safety or well-being of an Indian child, or a child whose Indian identity is not known, and who resides or is domiciled on a reservation.

4.2 Availability of Records and Data; Confidentiality

To enable a tribal social service agency or designated tribal representative to participate constructively in all cases involving the custody of Indian children, as provided by the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, a local social service agency responsible for conducting a Family Assessment or investigation shall collect available and relevant information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs, and share non-public information with an Indian tribal social service agency without violating a state law that may otherwise impose duties of confidentiality on a local social service agency to implement the Tribal/State Agreement. [Minn. Stat. § 626.556, subd. 10(h)]

Local social service agencies shall make available to tribal social service agencies, or a designated tribal representative, all case record materials, including reports, family social histories, and other documents and case information. This shall occur when a local social service agency is collecting information necessary to make a determination as to whether maltreatment has occurred, if protective services are needed, or an Indian child is in a dependent or other condition that could lead to an out-of-home placement, requiring the continued involvement of the agency with a child for a period in excess of 30 days. (See ICWA/MIFPA Social Worker Checklist); [Minn. Stat. § 260.761, subd. 2; Minn. Stat. § 626.556, subd. 10(h)]

The obligation of a local social service agency to disclose or transmit confidential records, documents or data to a tribe, or to involve a tribe in case planning activities pursuant to this section, is subject to:

1. Federal and state laws that require or authorize local social service agencies to disclose private or confidential information to Indian tribes; and
2. Applicable tribal, state or federal court orders that require such disclosure.

4.3 Payment of Costs

The costs of providing foster care for Indian children must be paid by local social service agencies regardless of whether a child is placed by a state or tribal court, or pursuant to a voluntary placement agreement facilitated by a local social service agency or tribal social service agency that is approved or certified by tribal or state court, provided that a placement is in a state or tribally licensed home, and the tribal social

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service agency or tribal court provides a local social service agency notice and an opportunity to be heard regarding the need for placement. In any such placement, disputes concerning the financial responsibility for costs of placement shall be settled in a manner prescribed in Minn. Stat. 256G.09. The amount of a local social service agency's obligation is determined according to the same eligibility standards and rates of support applicable to other children for whom local social service agencies pay foster care. (See also Minn. Stat. § 260.771, subd. 4.) [2007 Tribal/State Agreement, Part III, A]

4.4 Risk Assessments

Prevailing standards in the American Indian community shall guide all investigations and assessments. There must be a causal relationship between the conditions that exist and danger to a child. Poverty, inadequate housing, alcohol abuse or non-conforming social behavior alone is not sufficient reason to remove a child. [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at D.3 (Nov. 26, 1979)]

Under the Indian Child Welfare Act, Indian children shall not be removed from their families unless a child is in danger of suffering serious emotional or physical damage, which is supported by clear and convincing evidence in the case record, including testimony of a qualified expert witness. [25 U.S.C. § 1912 (e)] In an emergency removal situation, an Indian child shall not be removed except to prevent imminent physical damage or harm. Whenever possible, assessments of parents and children shall be conducted jointly by a local social service agency and tribal authorities. To achieve the best protection for Indian children and their families, assessments should be done in consultation with an individual with substantial knowledge of:

1. The tribe's prevailing social and cultural standards; and
2. Child-rearing practices within a tribal community.

Efforts by local social service agencies to conduct joint assessments, or to conduct assessments with an individual described above, should be documented by a local social service agency. [2007 Tribal/State Agreement, Part I, C.1]

4.5 Placement Preferences

Standards to be applied in meeting the preference requirements shall be the prevailing social and cultural standards of the community in which parent(s) or extended family reside, or where parent(s) or extended family members maintain social and cultural ties. [25 U.S.C. § 1915(d)]

Any local social service agency or private child-placing agency considering placement of an Indian child shall make active efforts to identify and locate extended family members. [Minn. Stat. § 260.761, subd.7; 2007 Tribal/State Agreement, Part I, E.4]

On the issue of placement preference, a local social service agency shall defer to the tribe in which a child is eligible for membership. (See "Indian Child's Tribe" definition.) [Minnesota Rules, Part 9560.0535, subpart 4, B]

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4.6 Order of Placement Preference

In out-of-home placement of an Indian child, a child must be placed in:

1. The least restrictive setting;
2. One that most approximates a family;
3. One in which their special needs may be met; and
4. A setting within reasonable proximity to their home.

Preference shall be given in the following order, absent good cause to the contrary, to foster care and pre-adoptive placements within:

1. A member of an Indian child's extended family;
2. A foster home licensed, approved, specified or acknowledged by an Indian child's tribe;
3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet a child's needs. [25 U.S.C. § 1915(b)]

In any out-of-home placement of an Indian child pursuant to a court order or court certification, [25 U.S.C. § 1913 (a)] local social service agencies will place children in accordance with placement preferences established by the Indian Child Welfare Act, unless a child's tribe has established, by resolution, a different order of preference. [25 U.S.C. § 1915(c)]

If a tribe(s) has a different placement preference established by resolution, it must formally notify the Minnesota Department of Human Services of this resolution. A copy of the resolution should be sent to the commissioner who will forward it to the local social service agencies.

Note: Out-of-home placement of Indian children with their siblings or half siblings in a non-relative, non-Indian home does not meet the placement preference requirements. This type of placement does not constitute a placement with "family" or with "relatives." A child's family, relatives or kinship relationships shall be determined in regard to the parent(s) and/or Indian custodian(s), not to other children in the placement home. In circumstances where a child requires placement in a non-relative home, or in a placement not within reasonable proximity to a child's home, or in placement where siblings are separated and not placed in close proximity, the local social service agency will make active efforts to assure that a child is placed as quickly as possible in accordance with preferences prescribed in this section.

4.7 Placement Outside of Order – Good Cause

All adoptive, pre-adoptive and foster care placements of Indian children shall be made strictly according to placement preferences of the Indian Child Welfare Act, [25 U.S.C. § 1915] except when there is good cause to the contrary. The burden of establishing good cause to the contrary is on the party who seeks a placement outside of the placement preferences. If a determination is made to depart from the Indian Child Welfare Act placement preferences based on the extraordinary physical or emotional needs of a child, a local social service agency shall provide a designated tribal representative with a written statement describing such needs, and explaining why they cannot be met by a placement within one of the placement preferences. If a

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determination is made to depart from the Indian Child Welfare Act placement preferences because of the unavailability of suitable families who meet the placement criteria, local social service agencies shall evaluate families according to the social, economic and cultural standards prevailing in the Indian community in which parent(s) or extended family members maintain social and cultural ties, and provide a designated tribal representative with a copy of that evaluation. If good cause to the contrary is found based on a child's objection, parents have the right to have a court review the objection.

Whenever a local social service agency, in conjunction with a child's tribe, places an Indian child in out-of-home placement outside the preference categories, the placement is to be considered a temporary arrangement, which shall continue only so long as good cause continues to exist. The local social service agency will clearly and unequivocally inform these foster families that the placement is temporary, and that the foster family should not expect to maintain a long-term placement of a child.

4.8 Parental and Child Preference

Where an Indian child is of sufficient age and maturity to be able to express a knowledgeable and reasoned opinion regarding his/her placement preference, and where otherwise appropriate under all surrounding circumstances, a local social service agency will inform a child's tribe(s) of a child's preference. A local social service agency should also inform a child's tribe(s) or tribal social service representative(s) of the placement preference of the parent(s). A child's parents have the right to have the issue of placement, or a change in placement, determined by juvenile court. If the sole basis for the preference of the parent or child is to avoid application of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, the court should reject the preference. [25 U.S.C. § 1915(c); 2007 Tribal/State Agreement, Part 1, E.15]

4.9 Active Efforts to Prevent Placement

The prevailing standards of a tribe shall guide all services and decisions on a case. Except in emergency situations, an agency shall make active efforts to provide services to a family after investigation and before making a decision to remove a child, in order to prevent breakup of the family, and to avoid the need for placement. Active efforts means a rigorous and concerted level of casework that uses prevailing social and cultural values, conditions and way of life of an Indian child's tribe to preserve a child's family, and to prevent placement of an Indian child and, if placement occurs, to return a child to the family at the earliest time possible. "Active efforts" sets a higher standard than "reasonable efforts" to preserve the family, to prevent breakup of the family, and to reunify a family, as defined by Minnesota law. [Minn. Stat. § 260.012 (c)]

Active efforts require acknowledging traditional helping and healing systems of an Indian child's tribe and using these systems as the core to help and to heal an Indian child and family. Before a local social service agency makes a decision that will affect a child's well-being, or when an out-of-home placement is contemplated, a local social service agency must seek guidance from an Indian child's tribe on how that family is structured, how the family can seek help, what family and tribal resources are available, and what barriers the family faces that could threaten its preservation. Local social service agencies should work with

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a child's tribe and family to develop an alternative plan to placement. [2007 Tribal/State Agreement, Part 1, E.4]

Active efforts include, but are not limited to:

1. Notifying and requesting involvement of a tribe(s) or designated tribal representative(s) to participate in a case at the earliest point possible, and actively soliciting their advice throughout a case.
2. Requesting that tribally designated representative(s) with substantial knowledge of prevailing social and cultural standards and child-rearing practices within a tribal community evaluate a family's circumstances and assist in developing a case plan that uses tribal and Indian community resources.
3. Providing concrete services and access to both tribal and non-tribal services including, but not limited to, financial assistance, food, housing, health care and transportation, when needed. Such services are to be provided in an on-going manner throughout a case to directly assist a family in accessing and engaging in those services.
4. Arranging visitation (including transportation assistance) that will take place, whenever possible, in the home of the parent(s), Indian custodian(s), other family members, or in some other non-institutional setting, to keep a child in close contact with parent(s), siblings, and other relatives, regardless of their age, and to allow a child and those with whom they are visiting to have natural and unsupervised interaction whenever consistent with protecting a child's safety. When the child's safety requires supervised visitation, consulting with tribal representative(s) to determine and arrange the most natural setting that ensures the child's safety.
5. Consulting with a tribe(s) about availability of tribal support for a family, including traditional and customary practices, as well as other tribal services, and using tribally based family preservation and reunification services whenever available. If no tribally based services are available, referring parent(s), Indian custodian(s), and children to other Indian agencies for services.
6. Consulting with extended family members for help and guidance, and using them as a resource for a child. If there is difficulty working with a family, seeking assistance from an agency, including tribal social services with expertise in working with Indian families.
7. Using available tribal, other Indian agency and state resources appropriate for a child and family.
8. Providing services to extended family members to allow them to be considered for placement of a child. [2007 Tribal/State Agreement, Part 1, E.4]

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Chapter 5 Case Plan

5.1 Requirements

1. The agency shall prepare a written case plan after consultation with and participation by tribe(s). [Minn. Stat. § 260C.212, subd. 1(b)]

The case plan shall:

- a. Ensure that active efforts are made to:
 - (1) Eliminate the need for placement of a child, if possible;
 - (2) Facilitate the return of a child; and/or
 - (3) Eliminate the need for an emergency hold or other court hearing.
 - b. Take into account the prevailing social and cultural conditions in a child's Indian community; and
 - c. Stress the use and involvement, where available, of tribal services and resources appropriate for Indian families. [25 U.S.C. § 1915(d)]
 - d. Encourage maintenance of an on-going familial relationship between parents or Indian custodian(s) and a child, as well as between a child and siblings, throughout the time a local social service agency is engaged in efforts to prevent family breakup;
 - e. Be based on services designed to effectively address and eliminate the danger to a child; and
 - f. Be formulated with the direct collaboration of parents or Indian custodian(s); the child, if of sufficient age; and tribe(s).
 - g. Ensure maximum involvement of Indian parent(s) or Indian custodian(s) and tribal social services or designated tribal representative; and
 - h. Focus on requirements for family members which are related to an identified risk factor, noted in a child protection assessment. In emergency situations, the case plan will focus on immediate actions directed at keeping a child in the home, if possible, by resolving circumstances that created immediate endangerment to a child.
2. Ensure that each parent has his or her own individualized case plan. Copies of all case plans should be provided to the parent(s), and/or Indian custodian(s), and must be provided to the tribal social services agency or designated tribal representative(s). [Minn. Stat. § 260.761, subd. 2; Minn. Rules, Part 9550.0090, subpart 1, F]

5.2 Content

Contents of the placement case plan must be consistent with Minn. Stat. §§ 260.761, subd. 2; 260C.212, subd. 1(b); and Minn. Rules, Part 9560.0603. Contents of a protective services case plan must be consistent with Minn. Stat. § 260C.201, subd. 6.

Note: Indian families shall not be held to a higher standard of care towards their children than non-Indian families. Indian families shall be evaluated based on prevailing tribal standards.

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5.3 Reunification Services

Once an Indian child has been placed in out-of-home placement, a local social service agency, in cooperation with a tribal social service agency, shall:

1. Make active efforts to provide remedial services and rehabilitative programs designed to return a child to the custody of the parents or Indian custodian(s); [25 U.S.C. § 1912(d)]
2. Develop a plan designed to effectively address and eliminate the problems that necessitated voluntary placement; and [Minn. Rules, Part 9560.0221, subpart 3,E]
3. Collaborate directly with parents or Indian custodian(s), a child, if of sufficient age, and a tribe(s) in developing the plan. The local social service agency, in cooperation with the tribe(s)' social service agency will regularly monitor the placement. [Adapted from Minn. Stat. § 260C.201, subd. 6]

When a placement ends and a child is returned to the parents or Indian custodian(s), a local social service agency, in cooperation with a tribal social service agency will provide the parents or Indian custodian(s) with information on the special needs, if any, of a child. Where necessary, a local social service agency, in cooperation with a tribal social service agency, will provide guidance to parent(s) or Indian custodian(s) in:

1. How to best meet a child's special needs; and
2. Assisting a child in adjustment to the familial

5.4 Cooperation and Access to Records

When a local social service agency prepares a social history, report, or pre-dispositional study for the court concerning an Indian child, a local social service agency shall cooperate with a child's tribal social service agency or designated tribal representative(s) in the preparation of the study. The study will describe in detail the role of a tribe(s) and will fully state the recommendation of a tribe(s) and such other information provided by a tribe(s).

Note: In addition, tribe(s) may submit a separate report to the court. For more information, refer to the section on Tribal Involvement.

Local social service agencies shall, upon request, give tribal social service agencies full cooperation, including access to all files concerning a child. If the files contain confidential or private data, agencies may require execution with a tribal social service agency of an agreement that a tribal social service agency will maintain the files according to statutory provisions applicable to this data. [25 U.S.C. § 1912(c); Minn. Stat. § 260.761, subd. 2, Minn. Stat. § 626.556, subd.10 (h)]

5.5 Post-placement Services

Whenever an Indian child is in an out-of-home placement, a local social service agency, in cooperation with a tribal social service agency, shall develop a plan for the future care, custody and control of a child.

The plan will be:

1. Consistent with the best interests of a child;
2. Specific about meeting any special needs of a child;

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3. Consistent with the culture and customs of a child's Indian community;
4. Formulated with the direct collaboration of a child, if of sufficient age; whenever possible, formulated with the collaboration of other members of a child's extended family;
5. Specific information about the maintenance of an on-going familial relationship between a child, his/her siblings and other members of a child's extended family;
6. Specific information about how a local social service agency and a tribe(s) will provide a foster home, facility or pre-adoptive home with information on the background and special needs, if any, of a child;
7. Specific information about how a local social service agency and a tribe(s) will provide instruction in necessary parenting skills in how to best meet a child's special needs; and
8. Specific information about how a local social service agency and a tribe(s) will assist a child in adjusting to termination of parental rights, foster care or pre-adoptive placement.

Local social service agencies, in cooperation with tribe(s)' social service agencies, shall regularly monitor any out-of-home placements:

1. For overall suitability;
2. To assure that a child is not the subject of abuse or neglect;
3. That a child's special needs are addressed; and
4. That a child's relationship with siblings, extended family and a tribe(s) are encouraged.

5.6 Periodic Review of Placement

Local social service agencies are required by Public Law 96-272 (Foster Care and Adoption Assistance Act), [42 U.S.C. 670 et seq.] to conduct periodic reviews of all out-of-home placements of children not less than every six months, unless reviews are being conducted by tribal social service agencies or state court. A child over age 12 has a right to participate in reviews.

At a minimum, a review will evaluate the suitability of an out-of-home placement, including but not limited, to suitability of a placement under the Indian Child Welfare Act, determine whether continued out-of-home placement is necessary and appropriate, or whether a child should be returned home, or if not, what permanent placement is consistent with a child's best interests, as defined under the Indian Child Welfare Act. Reviews will also evaluate the services rendered to a child and family, and efforts made to facilitate visitation with parent(s), Indian custodian(s), siblings and extended family. [Adapted from Minn. Stat. § 260.191, subd. 3(a) and (b)]

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Chapter 6 Notice of Potential Placement

To encourage and aid involvement of an Indian child's tribe(s) at the earliest possible time in any child protection intervention, local social service agencies shall give notice of a potential placement of an Indian child in the manner required. [See 2007 Tribal/State Agreement, Part 1, C.2]

Requirements of the following sections must be met whenever a local social service agency is considering a potential out-of-home placement:

- Cooperation and Access to Records
- Active Efforts to Prevent Placement
- Case Plan Requirements.

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Chapter 7 Voluntary Out-of-Home Placement

7.1 Voluntary Out-of-Home Consent

Whenever a parent(s) or Indian custodian(s) seek to temporarily place an Indian child out of the home, or to voluntarily terminate parental rights, consent to placement must:

1. Not be given prior to or within 10 days after birth;
2. Be in writing; and
3. Be recorded before a judge (See Content of Voluntary Out-of-Home Placement Consent). [25 U.S.C. § 1913 Tribal Social Services Involvement]

7.2 Tribal Social Services Involvement

Before accepting a voluntary consent to any out-of-home placement, a local social service agency shall:

1. Inform parent(s) of the legal requirement to notify a tribe, even if a parent(s) objects; [Minn. Stat. § 260.765, subd. 2]
2. Encourage parent(s) or Indian custodian(s) to contact a tribe regarding available services to assist them in retaining custody of a child, or to further the parent-child relationship during placement;
3. Make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family; [Adapted from 25 U.S.C. § 1912(d); Minn. Stat. § 260.012(c). 3]
4. Refer parent(s) or Indian custodian(s) to tribal resources or to American Indian agencies for provision of services. These may include:
 - a. The extended family;
 - b. Tribal social services; and
 - c. Other culturally appropriate programs aimed at preventing family breakup, i.e., traditional practitioners, where available, and individual Indian caregivers who have skills to help a family. [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, at D.2., Commentary (Nov. 26, 1979)]

7.3 Understanding by Parents of Voluntary Placement Consent

Before executing consent for voluntary out-of-home placement of an Indian child, a local social service agency shall explain the content of the consent to parent(s) or Indian custodian(s). In every case, the voluntary consent will not be valid unless terms and consequences of the consent were fully explained in detail, and were fully understood by the parent(s) or Indian custodian(s). In a case where there is doubt regarding a person's ability to read or understand English, the consent must be read in, or translated into, a language that the parent(s) or Indian custodian(s) understand. [Adapted from 25 U.S.C. § 1913(a)]

Requirements for the content of a Voluntary Out-of-Home Placement Consent form are set forth in Appendix B.

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7.4 State Court Validation of Voluntary Placement Consent

Local social service agencies shall request that a state court:

1. Validate a voluntary consent for out-of-home placement of an Indian child, in writing, and recorded before a judge of a court of competent jurisdiction;
2. Certify information from the Voluntary Placement Agreement Consent to include the content of the Voluntary Out-of-Home Placement Consent form (See Appendix B);
3. Certify that parent(s) or Indian custodian(s) fully understand their rights, as well as legal consequences of their consent for voluntary out-of-home placement. The certification by the court should list those rights, including those listed in the content of the Voluntary Out-of-home Placement Consent form, as well as the consequences. [25 U.S.C. § 1913(a)]

When there is a voluntary out-of-home placement, the steps set forth in the following sections must also be followed:

7.5 Termination or Change in Placement in a Voluntary Placement

Whenever there is a change in the voluntary placement of an Indian child, the provisions of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act must be followed, including:

1. Notice requirements: Minn. Stat. §§ 260.761, subd. 2, 260.765, subd. 2; 25 U.S.C. § 1912; and the Voluntary Placement Notice, and
2. Placement preferences. [25 U.S.C. § 1915]

The new placement shall be in accordance with directions in the Social Services Manual regarding placement preferences, unless a child is returned to the parent(s) or Indian custodian(s) from whose custody a child was originally removed.

Local social service agencies should notify tribe(s) at the earliest opportunity by phone and in writing of the need to change an Indian child's placement. [Adapted from 25 U.S.C. § 1912(a); 25 U.S.C. § 1916(b)]

A change in placement should not be made without involvement of a child's tribe(s), unless circumstances create a danger to a child and make it impossible to do so. When an emergency makes it impossible to obtain a tribe's involvement and permission, a child's tribe(s) shall be notified of the emergency by phone, FAX, or in writing as soon as a local social service agency learns of the emergency. The tribe retains the right to contest this decision, or the existence of an emergency.

Local social service agencies, in cooperation with tribal social service agencies, should assist a child to adjust emotionally to changes in any new placement.

Requirements of the following section must be met when a child is returned to the parents or an Indian custodian from a placement:

- Return of Child from Placement – Notice

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7.6 Petition for Review of Voluntary Placement

When a local social service agency petitions a state court for review of a voluntary out-of-home placement to determine if the placement is in the best interest of a child, pursuant to Minn. Stat. § 260C.141, subd. 2a, a local social service agency shall send notice and a copy of the petition to:

1. The parent(s) or Indian custodian(s);
2. The tribe(s); and
3. The child, if of sufficient age.

Local social service agencies shall consult with tribal social services or designated tribal representative regarding the necessity for continued out-of-home placement. The position of the tribe(s) regarding continued out-of-home placement must be documented in the case record.

7.7 Voluntary into Involuntary Placement

Whenever a local social service agency petitions a state court to change a voluntary out-of-home placement into an involuntary out-of-home placement, a local social service agency shall notify tribe(s) and parent(s) or Indian custodian(s) of a child. Notification shall include:

1. The determination to petition a state court to change a voluntary out-of-home placement into an involuntary out-of-home placement, and the reasons why;
2. Informing parent(s) or Indian custodian(s):
 - a. Of their rights to withdraw consent to an out-of-home placement and obtain the immediate return of a child, according to provisions set forth in the Return of Child from Placement – Notice.
 - b. That the return must be made unless the return of custody would likely cause an emergency, resulting in imminent physical harm to a child.

A local social service agency shall not seek to petition any court for an involuntary out-of-home placement where such petition is based solely on the prior voluntary placement of a child.

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Chapter 8 Emergency Removal of an Indian Child

8.1 Emergency Removal When Permitted

Local social service agencies may initiate removal or placement of an Indian child in an emergency, as provided in this paragraph. Before initiating an emergency removal or placement, a local social service agency should document, by evidence in the case record, that there exist:

1. Particular conditions in a child's home that are likely to result in serious physical damage or harm to a child; and
2. A direct cause and effect relationship between such conditions and imminent danger to a child. [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, at D.3(c) (Nov. 26, 1979)]

A local social service agency shall ensure that any such removal or placement terminates immediately upon removal of the threat of imminent damage or harm. It shall promptly take appropriate steps, in cooperation with a designated tribal representative, to return a child to the parent or Indian custodian, to transfer a case to the jurisdiction of a child's tribe, or to bring a child custody proceeding in the state court, if the state court retains jurisdiction, pursuant to information in the section regarding Jurisdiction over Non-resident or Domiciliary Children. [25 U.S.C. § 1922; The Bureau of Indian Affairs Guidelines, 44 Fed Reg. No 228, 67,584, at B.7(c) (Nov. 26, 1979)]

When a local social service agency initiates an emergency removal, steps in the following sections must also be followed:

- Identification of a Child as an Indian Child – Risk Assessments

8.2 Initial Response/Notification

Whenever a local social service agency determines that circumstances exist that would justify emergency removal of an Indian child, a local social service agency shall contact a social service agency of a child's tribe(s) or a designated tribal representative thereof to seek a tribe's active involvement in the risk assessment process. Whenever possible, the initial contact shall be made within the following time periods:

1. If a tribal social service agency has a 24-hour emergency response service, contact should be made no later than one hour after determination; or
2. If a tribe does not have a 24-hour emergency response service, contact should be made as early as reasonably possible on the next business day.

Local social service agencies shall make all reasonable efforts to contact and involve an Indian child's tribe prior to initiating an emergency removal; however, where a local social service agency determines that delay would put a child at risk of imminent physical damage or harm, it may initiate such removal prior to contacting a tribe. [25 U.S.C. § 1922]

A local social service agency case record must document efforts directed at notification and efforts to seek active involvement of a child's tribe.

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8.3 Emergency Contact List

Local social service agencies should use the emergency contacts list that was developed in cooperation with tribes and distributed by the Minnesota Department of Human Services.

When an Indian child is taken into emergency protective care, the court administrator, designee, or local social service agency should, as soon as possible and before any hearing takes place, inform the county attorney; the responsible social service agency; the child; and the child's counsel, guardian ad litem, parent(s), legal custodian(s), spouse, Indian custodian(s), and Indian tribe(s) by telephone or facsimile of the date, time and place of an emergency protective care hearing. [See Minn. R. Juv. Prot. P. 32.03, subd. 2] Appropriate tribal contacts are available through the Bureau of Indian Affairs website.

8.4 Order of Preference in Emergency Placements

In an emergency placement, an Indian child shall be placed according to the order of placement preferences outlined in the ICWA (See Placement Preferences). [25 U.S.C. § 1915(b)]

8.5 Continued Placement Beyond 72 Hours

If a local social service agency concludes that continued out-of-home placement is necessary for a period longer than 72 hours, and if a case has not been previously transferred to tribal court, a 72-hour hold and subsequent detention hearing will be held in state court. [Minn. Stat. § 260.172, subds. 1 and 2]

If the court orders continued out-of-home placement following an emergency detention hearing, the local social service agency shall request the court to set a fact finding hearing as soon as possible, but no later than 90 days beyond the date of court ordered out-of-home placement. [Minn. Stat. § 260.172, subd. 4]

If at any time prior to the fact finding hearing, the local social service agency determines that out-of-home placement is no longer necessary to prevent imminent physical damage or harm to a child, the local social service agency shall immediately take necessary action, including obtaining necessary court orders, to return a child to the custody of the parent(s) or Indian custodian(s). [Adapted from 25 U.S.C. § 1922; Minn. Stat. § 260.171, subd. 1]

8.6 Affidavits for Placements Beyond 72 Hours

Once an emergency placement lasts beyond 72 hours and becomes a child custody proceeding under ICWA/MIFPA, local social service agencies are required to follow the relevant notice requirements for involuntary child custody proceedings, or the notice requirements for voluntary placements. [Appendix A, Content of Notice in an Involuntary Placement]

Whenever a local social service agency petitions state court to hold an Indian child beyond the 72-hour emergency hold, the petition shall be accompanied by an affidavit containing certain verified information. [See Appendix C, for the specific information to be included]

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Chapter 9 Involuntary Out-of-home Placement

9.1 Criteria, Assessment, Documentation

Local social service agencies shall not initiate a proceeding for involuntary out-of-home placement unless an assessment, which is documented in the case file, determines that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to a child.

9.2 Services Prior to Court Action

Before filing an action in state court for involuntary out-of-home placement of an Indian child, local social service agencies shall make active efforts to prevent placement. [25 U.S.C. § 1912(d)]

A local social service agency shall provide social services to a family when:

1. The circumstances of a family, when viewed in light of the prevailing social and cultural standards and way of life of the tribe, require the provision of social services for the protection of a child and in support of the parent-child or Indian custodian-child relationship; and
2. The services actively provided by a local social service agency are designed to prevent the breakup of a family. Services will be designed to effectively address and eliminate problems that put a child at risk of out-of-home placement. [Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at D.2 (Nov. 26, 1979)]

When a case plan is developed, the requirements of the following section must also be met:

- Case Plan Requirements

9.3 Petition to State Court for Involuntary Out-of-home Placement

A local social service agency will petition the state court for an involuntary out-of-home placement only after it has undertaken active efforts to prevent breakup of an Indian family, but efforts were unsuccessful, or an emergency exists which makes active efforts impossible (see General Practice Provision, Active Efforts). [25 U.S.C. § 1912(d)]

Upon filing a petition to the state court for an involuntary out-of-home placement, local social service agencies shall follow the requirements listed in Appendix D, and:

1. Make available to a tribe(s) the entire case file for information about cooperation and access to records
2. Consult with tribe(s) to determine whether a tribe(s) wishes to assert jurisdiction over a matter
3. Consult with a tribe(s) regarding provision of services, which shall be in the best interest of an Indian child
4. Make every effort to plan with a family to eliminate the need for continued involuntary out-of-home placement.

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9.4 Petition Content

A local social service agency shall not petition the state court for any involuntary out-of-home placement of an Indian child when the only grounds for the petition is:

1. Evidence of community or familial poverty;
2. Crowded or inadequate housing; or
3. Alleged alcohol abuse or other nonconforming social behaviors on the part of the parent(s) or Indian custodian(s) unless it clearly demonstrates that such factors cause serious emotional or physical damage to a child by clear and convincing evidence, supported by testimony of an expert witness familiar with the prevailing social and cultural conditions and way of life of an Indian community. [Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at D.3(c) (Nov. 26, 1979)]

With every new petition, or amendment to a petition, a local social service agency shall notify the parent(s) or Indian custodian(s) and a child's tribe(s).

Whenever a local social service agency petitions a state court for involuntary out-of-home placement of an Indian child, the local social service agency will identify and verify the accuracy and content of a petition. See Appendix D for information to be included in Petition Content. In addition, if a child was initially the subject of an emergency removal or placement, and was held beyond 72 hours, a copy of the emergency placement affidavit shall be attached to the petition (see Appendix C).

Whenever a local social service agency petitions a state court for involuntary out-of-home placement of an Indian child, the requirements of the following sections must also be met:

- Content of Notice, see Appendix A
- Cooperation and Access to Records
- Payment of Costs
- Reunification Services
- Periodic Review of Placement
- Notice Requirement for Return of Child from Placement
- Post-placement Services
- Placement Preferences.

9.5 Local Social Service Agency Social Studies and Reports

Whenever a local social service agency prepares a social study, report or predisposition study pursuant to Minn. Stat. §§ 260B.157; 260B.193, subd. 2; 260C.201, subd.7; 260B.225, subd. 9, or any similar statute, it should consult with a tribal social service agency or designated tribal representative(s) in preparation of the study. A tribe may submit a separate study and/or report.

9.6 Record of Placement Determination

For each involuntary out-of-home placement determination, a local social service agency shall:

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1. Summarize efforts to provide the parent(s) with remedial services and rehabilitative programs designed to prevent breakup of an Indian family; and
2. Describe fully and in detail the basis to justify an involuntary out-of-home placement.

Whenever siblings are not placed together, the record should:

1. Explain in detail the reasons justifying separation of siblings; and
2. The steps taken to maintain a sibling relationship following placement.

When local social service agencies, in conjunction with a child's tribe, determine that placement cannot be made within the preference categories, efforts to find a suitable placement within such categories shall be stated in detail, including names and addresses of extended family and the tribal licensed or approved homes contacted. The record must also document in detail all ongoing efforts of a local social service agency to comply with the order of preference. [25 U.S.C. § 1915(e)]

In an involuntary out-of-home placement where there is a termination of, or change in placement, requirements of the following section must be met:

- Return of a Child from Placement Notice

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Chapter 10 Voluntary Relinquishment of Parental Rights

10.1 General Requirements

Voluntary relinquishment of parental rights refers to the non-coerced, free-will decision to end parental rights and responsibilities for the purpose of placing a child for adoption. Before accepting a voluntary consent to relinquish parental rights to a child, a local social service agency shall make and document active efforts to determine:

1. If a child is an Indian child; and
2. A child's tribal affiliation.

Parent(s) seeking to voluntarily terminate their parental rights shall be informed that:

1. Consent of a parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and a child shall be returned to a parent, and
2. After entry of a final decree of adoption in any state court, a parent may withdraw consent on the grounds that consent was obtained through fraud or duress, and may petition the court to vacate the decree and return a child to a parent. [Adapted from 25 U.S.C. §§ 1913(c) and (d)]

Local social service agencies shall advise a parent(s) and Indian custodian(s) that:

1. The Indian Child Welfare Act and Minnesota Indian Family Preservation Act requirements of notification and placement preference govern the action of termination of parental rights proceedings, and [25 U.S.C. §§ 1915(a) and (b); Minn. Stat. § 260.761, subd. 2]
2. Parents may pursue relinquishment of parental rights for the adoption of an Indian child through a proceeding in the tribal court of the child's tribe, if available. [Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at C.1 (Nov. 26, 1979)]

Note: Local social service agencies should refer a parent(s) or Indian custodian(s) to a tribal social service agency or designated tribal representative(s) for further information regarding tribal court procedures.

When validation of a voluntary consent to relinquish parental rights or adoption is verified and is to proceed in state court, local social service agency staff should contact tribal social service agency staff, or designated tribal representative(s), and request that the tribe become involved to ensure that consent is voluntary and does not involve fraud or duress. Efforts of local social service agency staff to secure involvement of tribal social service agency staff, or a designated tribal representative(s), will be documented. Documentation shall be sent to the tribe upon its request.

In any case where the court determines indigence, a parent(s) or Indian custodian(s) shall have the right to court-appointed counsel to any removal, placement or termination proceedings. The court may, in its discretion, appoint counsel for a child upon a finding that such appointment is in the best interest of a child. [25 U.S.C. § 1912(b)]

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When a parent of an Indian child is seeking to voluntarily relinquish parental rights, the requirements of the following section must be met:

- Active Efforts

10.2 Explanation of Consent to Relinquish Parental Rights

Before a parent(s) or Indian custodian(s) can execute a consent to relinquish parental rights of an Indian child, local social service agency staff shall explain the content of the consent to parents or Indian custodians to ensure that consequences are understood. In every case, a parent(s) or Indian custodian(s) shall not be permitted to sign the consent until they have read, or in cases where there is doubt about reading ability or understanding of consent, has had the consent read and the meaning explained to them.

A copy of the certified termination will be provided to the consenting parent(s) and/or Indian custodian(s).

10.3 Content of Consent

The consent document shall contain information described in Appendix E. Information required for the content of a voluntary termination petition is described in Appendix F.

For information on:

- Notification to the Tribe
- Post-placement Services

10.4 Withdrawal of Voluntary Consent

In any voluntary proceeding for termination of parental rights to, or adoptive placement of an Indian child, consent of parents may be withdrawn for any reason at any time prior to entry of a final decree of termination or adoption, as the case may be, and a child shall be returned to parents. [25 U.S.C. § 1913(c)]

After entry of the final decree of adoption of an Indian child in any state court, parents may withdraw consent thereto on the grounds that consent was obtained through fraud or duress, and may petition the court to vacate such decree. Upon finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return a child to the parents. No adoption, which has been effective for at least two years, may be invalidated under the provisions of this subsection, unless otherwise permitted under state law. [25 U.S.C. § 1913(d)]

Return of custody to parents or Indian custodian(s) shall occur unless:

1. Parents or Indian custodian(s) voluntarily consent to out-of-home placement of a child
2. A court order for out-of-home placement was previously entered in accordance with 25 U.S.C. § 1912, and remains in effect
3. Return of custody would likely cause an emergency, resulting in serious physical damage or harm to a child.

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If a child is returned to the custody of parents or Indian custodian(s) following withdrawal of consent to relinquish parental rights, a local social service agency, in cooperation with a tribal social service agency, shall undertake active efforts for reunification.

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Chapter 11 Involuntary Termination of Parental Rights

11.1 Criteria, Assessment, Documentation

Local social service agencies shall not begin proceedings for the involuntary termination of parental rights to an Indian child unless an assessment, which has been documented in the case file, concludes that continued custody of a child by parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to a child.

11.2 Services Prior to Court Action

Before filing an action in state court for the involuntary termination of parental rights of an Indian child, local social service agencies shall:

1. Make active efforts to provide social services to parents, Indian custodians and children for protection of children and support of their family. Active efforts shall continue until a judicial determination regarding permanency is made. Active efforts shall meet requirements described in General Practice Provisions.
2. Complete a long-term plan for permanency that, among other things, includes measures that are likely to eliminate physical and emotional threats that justify termination of parent rights.
3. Explore all potential alternative dispositions which may be preferable to a termination, including but not limited to, transfer of legal custody to a relative, permanent foster care with relatives/extended family, consistent with Minnesota law.
4. If requested, make available to a tribe all records relevant to a case.
5. Consult with a tribe(s) to determine whether it wishes to assert jurisdiction over the matter.
6. Formulate with a tribe(s) a mutually acceptable course of action which is in the best interest of a child.
7. Make every effort with parents, Indian custodians and a tribes to agree to family service plans and legal arrangements designed to eliminate the need for filing a petition.

When a local social service agency brings a petition for the involuntary termination of parental rights, the requirements in the following sections must be met:

- Petition Content for Involuntary Termination of Parental Rights of an Indian Child (see Appendix G)
- Tribal Notification
- Content of Notice
- Cooperation and Access to Records
- Transfer of Jurisdiction and Payment of Costs
- Notice of Review of Placement
- Return of Child from Placement
- Post-placement Services.

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Chapter 12 Pre-adoption/Adoption

12.1 Pre-adoption Procedures

Before taking any action on a pre-adoptive placement, local social service agencies shall make and document efforts to determine:

1. If a child is Indian children
2. A child's tribe(s)
3. Whether a child is a ward of tribal court
4. If a child resides or is domiciled on a reservation (see Jurisdictional Issues).

If these determinations have been made and documented pursuant to previous litigation, they do not have to be repeated.

If a child is a ward of a tribal court, that tribe has exclusive jurisdiction over the proceedings and a local social service agency may take no action on placement, unless requested to do so by tribal court.

Where the state court has jurisdiction and a local social service agency seeks to place a child for the purposes of adoption, the agency:

1. Should use a tribal social service agency or a designated tribal representative in identifying and evaluating the suitability of potential placements
2. Shall defer to tribal judgment as to the suitability of a particular home when a tribe has intervened pursuant to the Indian Child Welfare Act, and Minn. Stat. § 257.072, subd. 7(b)
3. Shall provide a tribal social service agency with all the information it has about a child.

Local social service agencies will advise prospective adoptive parents that they may have the option of filing adoption proceedings in tribal court. It will provide prospective adoptive parents with the name, address, and telephone number of a tribe(s) or designated tribal representative(s) for additional information regarding tribal court procedures.

Until entry of a final decree of adoption, a local social service agency, in cooperation with a tribal social service agency, will regularly monitor the pre-adoptive placement for:

1. Continued overall suitability
2. Assurance that a child is not the object of abuse or neglect
3. Assurance that a child's special needs are being addressed
4. Assurance that a child's relationship with his/her siblings are maintained, and where applicable, other members of a child's birth extended family are encouraged
5. All other conditions and commitments of the placement are being met. [Minn. Stat. § 260C.212, subd. 7]

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12.2 Placement Preference – Adoption

In any adoptive placement of an Indian child under state law, preference shall be given in the absence of good cause to the contrary, to a placement with

- 1 A member of an Indian child's extended family
- 2 Other members of an Indian child's tribe
- 3 Other Indian families. [25 U.S.C. § 1915(a)]

In any adoptive placement of an Indian child, the requirements of the following sections must also be met:

- Placement Outside of Order – Good Cause
- Parental and Child Preference.

12.3 Record of Placement Determination

For every adoptive placement determination, local social service agencies must prepare a detailed record:

1. Describing the basis for placement determination
2. Explaining the reasons justifying separation of siblings, if they are separated
3. Steps taken to maintain the sibling relationship following placement.

Where an adoptive placement is outside the order of preference, documentation shall include:

1. A detailed explanation of why good cause did not follow the order of preference
2. Efforts to find a suitable placement within the order of preference (including full names and addresses of extended family and tribally approved homes contacted). (See General Practice Provisions, Placement Outside of Order – Good Cause.) [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at F.3 (Nov. 26, 1979)]

Upon request, documentation shall be sent to a tribe(s).

12.4 Post-Placement Adoption Services

Services must be consistent with post-placement adoption services, in general. If, prior to entry of a final decree of adoption, a local social service agency is required to document its findings regarding the criteria below, pursuant to Minnesota law or request of the court, it must provide a tribe(s) with such report(s) describing and evaluating:

1. A child's adjustment
2. Suitability of placement
3. Extent to which an adoptive home has carried out conditions, if any, of the placement.

A tribe(s) has the right to submit separate reports.

12.5 Post-placement Review

Post-placement reviews must be consistent with review processes for children in general.

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12.6 Termination of Adoption

Whenever a final decree of adoption of an Indian child has been vacated or set aside, or the adoptive parents voluntarily consent to termination of their parental rights to a child, a biological parent or prior Indian custodian may petition for return of custody, unless the return or custody is not in the best interest of a child. [Adapted from 25 U.S.C. § 1916(a)]

12.7 Notice of Termination of Adoption

Notice of a termination of adoption shall be given to a child's biological parents, or prior Indian custodian(s) and a child's tribe(s). Notice shall inform parents or Indian custodian(s) of their right to petition for return of custody of a child. [Adapted from the Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at G.3 (Nov. 26, 1979)]

12.8 Placement Procedure

Whenever an Indian child is removed from an adoptive placement for the purpose of further out-of-home placement, a local social service agency will place a child consistent with the placement preferences, unless a child is being returned to parents or Indian custodian(s) from whose custody a child was originally removed (see General Practice Provisions, Placement Preferences). [Adapted from 25 U.S.C. § 1916(b)]

12.9 Services to Child after Termination of Adoption

Local social service agencies, in cooperation with tribal social service agencies, will assist a child to adjust emotionally to the termination of an adoption and to any new placement, including return to the custody of biological parents. This assistance will include a designated tribal representative, and such other expert(s) as may be appropriate and necessary (see General Practice Provisions, Reunification Services, for additional information regarding services).

12.10 Adoption Records to the Secretary of the Interior

Whenever a state court enters a final decree of adoption with respect to an Indian child, a local social service agency must send to the Minnesota Department of Human Services, the tribal social service agency of a child, and the Secretary of the Interior, a copy of the final decree of adoption, as well as:

1. Name and tribal affiliation of a child
2. Names and addresses of biological parent(s) and adoptive parent(s)
3. Identity of any agencies having files or information relating to the adoptive placement
4. Any affidavits of a biological parent(s) who requests confidentiality. [25 U.S.C. § 1951(a); Minn. Stat. § 260.781, subd. 1]

12.11 Death or Terminal Illness of an Adopted Child

Local social service agencies shall promptly notify a tribe(s) whenever it receives notice that an adopted Indian child has died or is terminally ill. [Minn. Stat. § 259.27]

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Chapter 13 Addresses for Information and Notification of Tribes

13.1 Notice when a tribe or band is known

When an agency knows the name of a tribe, notice can be sent directly to a tribe and other parties. The list of Indian child welfare designated agents to receive such notices is published annually in the Federal Register, Department of Interior, Bureau of Indian Affairs (BIA) tribally designated ICWA contacts (<http://www.bia.gov/cs/groups/public/documents/text/idc012540.pdf>). It is not necessary to notify the BIA in such cases unless additional tribes are involved and an exact tribe or band is not known. It is important to realize that some tribes, such as the Dakota/Lakota/Nakota, Ojibwe, Apache and Cherokee have numerous bands or reservations. If the exact name of a tribe is unknown, and the information cannot be found in the Federal Register, follow instructions provided in the next section.

13.2 Notice when a tribe or band is not known

Determine if a child is an Indian child. If no other information is available on a child's Indian ancestry, a notice must be sent to the BIA, which includes all information specified in 25 C.F.R. § 23.11. For proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio and Wisconsin, notices must be sent to the BIA Minneapolis Area Office (address on attachment).

When information denotes that a child is Dakota, Ojibwe or other tribe(s), but a local agency cannot determine the exact tribe, it will need to submit notice to the BIA Minneapolis Area Office. For some tribes, more than one area office will need to be notified for purposes of determining tribal eligibility of a child. Notifying these area offices will save time in obtaining a response.

13.3 General Information

When transmitting notices to the Bureau of Indian Affairs, it is recommended that notices be sent to the attention of Branch of Social Services. To ensure that the information is kept confidential, note "Confidential" on the envelope.

All notices to individuals or agencies receiving information should be clearly identified and indicated on the form. For example, if a notice is sent to the BIA Minneapolis and Billings area offices, indicate that both parties were notified.

For questions on these guidelines, or for clarification on particular cases, contact the Minneapolis area office branch of Social Services at 612-713-4400, or send notice to the following address:

Attn: ICWA Matters
Midwest Regional BIA Office, Department of Interior
Norman Pointe II Building
5600 W. American Boulevard, Suite #500
Bloomington, MN55437

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Chapter 14 Forms

Following are DHS forms which may be reproduced or revised, as necessary:

ICWA Data Practices Agreement (DHS 5225)

<https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5225-ENG>

ICWA Child Welfare Placement Preference and Considerations Documentation (DHS 5226)

<https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5226-ENG>

Notice to Parent Considering Voluntary Placement of an Indian Child (DHS 4427B)

<https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4427B-ENG>

ICWA Notice to Tribe of Services to an Indian Child (DHS 5227)

<https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5227-ENG>

Request for the Return of an Indian Child (DHS 4525)

<https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4525-ENG>

ICWA/MIFPA Social Worker Checklist (DHS 5224)

<https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5224-ENG>

Voluntary Out-of-home Placement Agreement Consent – Indian Child (DHS 3374)

<https://edocs.dhs.state.mn.us/lfserver/Public/DHS-3374-ENG>

Notice to Parent(s) American Indian Child in Voluntary Treatment Foster Care (DHS 5726)

<https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5726-ENG>

American Indian Child in Voluntary Foster Care for Treatment Agreement (DHS 5728)

<https://edocs.dhs.state.mn.us/lfserver/Public/DHS-5728-ENG>

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Chapter 15 Appendices

The following appendices provide information regarding the content of required legal documents used in service delivery to American Indian children:

[Appendix A Content of Notice in an Involuntary Placement](#)

[Appendix B Content of Voluntary Out-of-home Placement Consent](#)

[Appendix C Content of an Affidavit for Emergency Placement Which Extends Beyond 72 Hours](#)

[Appendix D Content of Petition for the Involuntary Out-of-home Placement of Indian Children](#)

[Appendix E Content of Consent Document for Voluntary Relinquishing of Parental Rights](#)

[Appendix F Content of Petition for Voluntary Relinquishing of Parental Rights](#)

[Appendix G Content of Petition for Involuntary Termination of Parental Rights of an Indian Child](#)

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APPENDIX A Content of Notice in an Involuntary Placement

Notice of an involuntary placement shall be written in clear and understandable language and shall include the following information:

1. The name of an Indian child
2. Tribal affiliation
3. Copy of the petition, complaint or other document by which the proceeding was initiated
4. Name of the petitioner and the name and address of the petitioner's attorney
5. A statement of the right of biological parents or Indian custodian(s) and a child's tribe to intervene in the proceeding
6. A statement that if parents or Indian custodian(s) are unable to afford counsel, counsel will be appointed to represent them
7. A statement of the right of the biological parents or Indian custodian(s) and an Indian child's tribe to have on request 20 days, or such additional time as may be permitted under state law, to prepare for the proceedings
8. The location, mailing address and telephone number of the court
9. A statement of the right of parents or Indian custodian(s) or an Indian child's tribe to petition the court to transfer the proceeding to an Indian child's tribal court;
10. The potential legal consequences of an adjudication on future custodial rights of parents or Indian custodian(s)
11. A statement in the notice to a tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential information contained in the notice concerning the particular proceeding, not revealing it to anyone who does not need the information in order to exercise the tribe's right under the ICWA [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.5 (Nov. 26, 1979)]
12. Location, telephone number and name, if known, of the judge or referee of the court which will hear the consent. [Adapted from the Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at E.2 (Nov. 26, 1979)]

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APPENDIX B Content of Voluntary Out-of-Home Placement Consent

The form used to provide a voluntary consent in an out-of-home placement of an Indian child shall include the following information:

1. Child's full name and date of birth.
2. Tribes with which an Indian child is eligible for membership or has membership.
3. Full names, birth dates, and addresses of a child's parents or Indian custodian.
4. Tribal affiliation(s) of biological parents and/or Indian custodian(s) (if tribal affiliation has not been determined, a statement to that effect shall be included).
5. A statement whether an Indian child's residence or domicile is on the reservation.
6. A statement that an Indian child is not a ward of any tribal court.
7. A statement affirming that consent was not given prior to, or within 10 days after, a child's birth.
8. A statement acknowledging the understanding by parents or Indian custodian(s) of the right to services to prevent placement of a child.
9. Description of active efforts that have been made by an agency to prevent placement.
10. A statement that a consent or order to be valid must be approved in a court proceeding at which parents or Indian custodian(s) personally appears.
11. The right to withdraw consent to a voluntary out-of-home placement, and to have a child returned within 24 hours after receipt of a written and notarized demand for return filed with juvenile court. This return must be made unless a petition has been filed with the court alleging that the return would not be in the best interest of a child.
12. A copy of the consent is to be sent to a tribe and that parent(s) or Indian custodian(s) have been advised of the provisions of ICWA governing voluntary foster placement.
13. The name of a local social service agency involved in the preparation of a consent and the date consent was prepared.
14. Name and address of the placement, if known at the time.
15. Date and time of the hearing to obtain court validation of consent, if known.
16. Location, telephone number and name, if known, of the judge or referee of the court which will hear the consent. [Adapted from the Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at E.2 (Nov. 26, 1979)]

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APPENDIX C Content of an Affidavit for Emergency Placement Which Extends Beyond 72 Hours

Whenever the local social service agency petitions state court to order the emergency out of home placement of an Indian child for a period longer than 72 hours, the petition shall be accompanied by an affidavit containing the following verified information:

1. Names, age and last known address of an Indian child;
2. Name and address of a child's parent(s) and Indian custodian(s), if any. If such persons are unknown, a detailed explanation of what efforts have been made to locate them shall be included;
3. Facts necessary to determine the residence and the domicile of an Indian child, and whether either the residence or domicile is on an Indian reservation. If either the residence or domicile is believed to be on a reservation, the name of the reservation shall be stated;
4. The tribal affiliation of a child, a parent(s) and/or Indian custodian(s);
5. The specific and detailed account of the circumstances that led the agency responsible for the emergency removal of a child to take that action;
6. If the child is believed to reside or be domiciled on a reservation, where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made to transfer a child to a tribe's jurisdiction; and
7. A statement of the specific actions that have been taken to assist the parent(s) or Indian custodian(s) so the child may safely be returned to their custody. [Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228., at B.7(b) (Nov. 26, 1979)]

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APPENDIX D Content of Petition for the Involuntary Out of Home Placement of Indian Children

Whenever the local social service agency petitions a state court for the involuntary out-of-home placement of an Indian child, the petition will identify and verify the accuracy of the content of the petition. The following information is to be included in the petition content:

1. Full name, birth date, and address of the home from which an Indian child was removed;
2. Tribal affiliation(s) of the Indian child. If a child's tribe(s) is not known, a statement of what information is known that could lead to identification of a child's tribe(s). Information must be provided for all tribe(s) with which a child may be eligible for membership;
3. Full names, maiden names, A.K.A.'s, and addresses of a child's parent(s) or Indian custodian(s), if known. If the whereabouts of persons are unknown, a detailed explanation shall be included of the efforts made to locate them;
4. Tribal affiliation(s) of a parent(s) and/or Indian custodian(s);
5. A statement as to whether the Indian child's residence or domicile is on a tribe(s)' reservation;
6. A specific and detailed account of the circumstances that led a local social service agency to petition the state court, which specifies the circumstances where a child was put in danger or serious emotional or physical damage, and with the direct cause and effect clearly stated;
7. A statement of specific active efforts made by a local social service agency (excluding emergency situations) to provide services designed to prevent the breakup of an Indian family. These efforts must relate to the circumstances described above in Number 6. The statement shall also state whether these efforts were unsuccessful, and the reasons for any lack of success; and
8. Names, addresses and telephone numbers of the petitioner.

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APPENDIX E Content of Consent Document for Voluntary Relinquishing of Parental Rights

A document executing consent to relinquish parental rights shall contain the following information:

1. Name and birthdate of an Indian child;
2. Name of an Indian child's tribe, any identifying number or other indication of a child's membership in the tribe, if any; and
3. Name and address of the consenting parent(s) or Indian custodian(s);
4. Name and address of a person by or through who any pre-adoptive or adoptive placement has been or is to be arranged; [The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at E.2 (Nov. 26, 1979)]
5. A statement that a parent(s) or Indian custodian(s) has the right to services to prevent out-of-home placement of a child;
6. A description of the active efforts made by the local social service agency to prevent out-of-home placement;
7. Acknowledgment that the consent, in order to be valid, must be approved in a court proceeding at which a parent(s) or Indian custodian(s) personally appear; [25 U.S.C. § 1913(a)]
8. A statement that a parent(s) or Indian custodian(s) has a right to court-appointed counsel, if found to be indigent; [25 U.S.C. § 1912(b)]
9. A statement that the consent of a parent(s) may be withdrawn for any reason prior to the entry of a final decree of termination or adoption; [25 U.S.C. § 1913(c)]
10. Acknowledgment that after entry of a final decree of adoption in any state court, a parent may withdraw consent on the grounds that consent was obtained through fraud or duress, and may petition the court to vacate the decree; [25 U.S.C. § 1913(d)]
11. A statement that, upon withdrawal of consent, a child may be returned to the custody of a parent(s) or Indian custodian(s) unless a court order for out-of-home placement has previously been entered, or the return of custody would likely cause imminent physical damage or harm to a child;
12. A statement that a parent(s) or Indian custodian(s) has been advised of the provision of the Indian Child Welfare Act governing voluntary relinquishment of parental rights or adoption;
13. Name and address of a local social service agency office or private agency, name of a worker involved in the preparation of the consent, and the date a parent(s) or Indian custodian(s) signed the consent; and
14. A statement that a parent(s) or Indian custodian(s) was informed that when a child attains the age 18, he/she will be able to obtain information about the tribal affiliation of both parents. [25 U.S.C. § 1917]

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APPENDIX F Content of Petition for Voluntary Relinquishing of Parental Rights

The content of a petition for voluntary relinquishment of parental rights of an Indian child filed pursuant to Minn. Stat. §§ 260C.307, subd. 1, and 260B.141, subds. 2 and 3 shall include:

1. Full name and birthdate of a child, and his/her last known address;
2. Full name, birthdate and last known address of a parent(s) or Indian custodian(s), their maiden or family names, other married names, and names of parent(s) who are deceased, if known;
3. Listing of all tribe(s) with which an Indian child is eligible for membership or has membership. If an Indian child's tribe(s) is not known, a statement of what information is known that could lead to identification of a child's tribe(s);
4. Information about the tribal affiliation(s) of all biological parent(s) and/or Indian custodian(s). If a tribal affiliation has not been determined, a statement to that effect shall be included;
5. A statement as to whether an Indian child's residence or domicile is on a reservation. If there is insufficient information available, a statement to that effect shall be included;
6. A statement that an Indian child is not a ward of any tribal court. If there is insufficient information to determine the tribal wardship status of the child, a statement to that effect shall be included;
7. A statement affirming that consent was not given 10 days prior to, or within 10 days after a child's birth;
8. Full names, address, and tribal affiliations, if any, of a prospective parent(s) (if known at the time), and if the prospective parent(s) have consented to disclosure of such information; and
9. Request to the court to certify that a parent(s) or Indian custodian(s) fully understands all of their rights, as well as the legal consequences of their relinquishment of parental rights.

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APPENDIX G Content of Petition for Involuntary Termination of Parental Rights Child of an Indian Child

The content of a petition for involuntary termination of parental rights of an Indian child, filed pursuant to Minn. Stat. §§ 260C.307, subd. 1, and 260C.307, subds. 2 and 3 shall include:

1. Full name, birthdate, and last known address of a child;
2. Full name, birthdate and last known address of a parent(s) or Indian custodian(s). Include maiden names, married names, and names of parents who are deceased, if known;
3. List of all tribes with which the Indian child is eligible for membership or has membership. If an Indian child's tribe is not known, a statement of what information is known that could lead to identification of the child's tribe;
4. Tribal affiliation(s) of all parent(s) and/or Indian custodian(s). If the tribal affiliation has not been determined, a statement to that effect shall be included;
5. A statement as to whether the Indian child's residence or domicile is on a reservation. If there is insufficient information available, a statement to that effect shall be included;
6. A statement that an Indian child is not a ward of any tribal court. If there is insufficient information available to determine tribal wardship status of a child, a statement to that effect shall be included;
7. A specific and detailed account of the grounds for termination;
8. A statement, with documentation, of the specific active efforts made by a local social service agency to provide remedial and rehabilitative services designed to prevent the breakup of an Indian family;
9. A description of all alternative dispositions explored as preferable to termination;
10. A description of the long-term plan for permanency and the justification of how the child will be better off after termination; and
11. A statement that no termination of parental rights may be ordered in a proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified witnesses, that the continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child.