

Chapter 16

2023 Regular Session

Subject Minnesota Indian Family Preservation Act

Bill S.F. 667

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Date June 1, 2023

Overview

The federal Indian Child Welfare Act (ICWA) of 1978 establishes child protection procedures and requirements for children who are members of or eligible for membership in a federally recognized Tribe. In 1985, Minnesota enacted the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes sections 260.751 to 260.835, to expand upon ICWA requirements. Elements of ICWA and MIFPA requirements include:

- inquiry into a child's lineage to an Indian tribe
- agency and court notice to a child's parents, custodian, and Tribe and the Bureau of Indian Affairs
- criteria for removal of an Indian child
- qualified expert witness testimony regarding risk of serious emotional or physical damage to a child
- active efforts to provide remedial and rehabilitative services, to prevent out-of-home placement
- specific out-of-home placement and permanency preferences for Indian children

In November 2022, the United States Supreme Court heard oral arguments on *Haaland v. Brackeen*, a case challenging the constitutionality of ICWA on multiple grounds. A decision on the case is expected in June 2023.

This act makes technical changes and adds numerous provisions to MIFPA, incorporating federal ICWA procedures and requirements for voluntary and involuntary child placement and permanency proceedings. The act also removes the expiration for the American Indian Child Welfare Advisory Council.

Summary

Section	Description
1	<p>Applicability.</p> <p>Proposes coding for § 260.752. States that MIFPA and ICWA apply without exception to any child placement proceeding involving an Indian child in which custody is granted to someone other than a parent or an Indian custodian. Specifies that nothing in MIFPA applies to custody actions between parents or between a parent and an Indian custodian.</p>
2	<p>Purposes.</p> <p>Amends § 260.753. Makes a technical change.</p>
3	<p>Policy on Tribal-state relations.</p> <p>Proposes coding for § 260.754. States Minnesota’s policy on state-Tribal relations.</p> <p>Paragraph (a) acknowledges federally recognized Indian Tribes as sovereign political entities that have retained sovereign authority, which can only be limited by the federal government and not by any action of the state.</p> <p>Paragraph (b) states that members of federally recognized Indian Tribes have inherent rights and privileges that the state recognizes and protects.</p> <p>Paragraph (c) states that Indian people have a right to be protected from disenfranchisement or deprivation of any of the rights and privileges secured to any citizen in the state, and a right to the recognition and protection of their rights as Tribal members by any state action.</p> <p>Paragraph (d) states that Minnesota recognizes that all federally recognized Tribes have inherent authority to determine their own jurisdiction for any and all Indian child custody or placement proceedings, regardless of the location of the Tribe’s members or procedural posture of the proceedings.</p> <p>Paragraph (e) states that Minnesota recognizes the importance of Indian children to the Tribes.</p> <p>Paragraph (f) states that Minnesota recognizes the history that has led to disparate out-of-home placement of Indian children.</p>
4	<p>Active efforts.</p> <p>Amends § 260.755, subd. 1a. Changes “local social services agency” to “child-placing agency;” makes technical changes.</p>

Section	Description
5	Child placement proceeding. Amends § 260.755, subd. 3. Makes technical changes. Modifies “child placement proceeding” definition to specify that it includes all placements where Indian children are placed out-of-home or away from the care, custody, or control of their parents or Indian custodian that do not implicate custody between the parents.
6	Child-placing agency. Proposes coding for § 260.755, subd. 3a. Adds definition of “child-placing agency.”
7	Child placement. Proposes coding for § 260.755, subd. 3b. Adds definition of “child placement.”
8	Custody. Proposes coding for § 260.755, subd. 4a. Adds definition of “custody.”
9	Emergency proceeding. Proposes coding for § 260.755, subd. 5a. Adds definition of “emergency proceeding.”
10	Extended family member. Proposes coding for § 260.755, subd. 5b. Adds definition of “extended family member.”
11	Imminent physical damage or harm. Proposes coding for § 260.755, subd. 6a. Adds definition of “imminent physical damage or harm.”
12	Public act. Proposes coding for § 260.755, subd. 16a. Adds definition of “public act.”
13	Tribal court. Amends § 260.755, subd. 20. Strikes language from definition of “Tribal court” regarding conferral of jurisdiction on an Indian Tribe.
14	Voluntary foster care placement. Amends § 260.755, subd. 22. Updates terminology to “child-placing agency.”
15	Emergency removal or placement of Indian child; termination; appropriate action. Proposes coding for § 260.758. Subd. 1. Emergency removal or placement permitted. Clarifies that nothing in MIFPA prevents the emergency removal of an Indian child or the emergency

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placement of the child, to prevent imminent physical damage or harm to the child.

Subd. 2. Temporary emergency jurisdiction of state courts. (a) Requires the child-placing agency or court to ensure that any emergency removal or placement ends immediately when it is no longer necessary to prevent imminent physical damage or harm. Specifies available options after an emergency removal or placement.

(b) Specifies that a state court only has temporary emergency jurisdiction if the Indian child is a resident of or domiciled on a reservation but temporarily located off the reservation, until jurisdiction is transferred to the appropriate Tribe's jurisdiction, unless the child's Tribe expressly declines to exercise its jurisdiction or the child is returned to the child's parent or custodian.

Subd. 3. Petition for emergency removal; placement requirements. Specifies the information that must be included in a petition for a court order to authorize emergency removal or emergency placement of an Indian child.

Subd. 4. Emergency proceeding requirements. Requires a court to hold a hearing no later than 72 hours after the emergency removal of the Indian child, to determine whether the emergency removal continues to be necessary. Requires additional hearings whenever new information indicates that the emergency is no longer necessary.

Subd. 5. Termination of emergency removal or placement. (a) Requires an emergency removal or placement to end once there is sufficient evidence that the emergency removal or placement is no longer necessary; requires the child to be immediately returned to the parent or custodian.

(b) Outlines when an emergency removal or placement ends, either when jurisdiction is transferred to the child's Tribe or the court orders that the child be placed in foster care.

(c) States that an emergency removal or placement cannot last longer than 30 days unless the court finds by a showing of clear and convincing evidence that: (1) continuing the emergency placement is necessary to prevent imminent physical damage or harm to the child; (2) the court has not been able to transfer the proceeding to the child's Tribe; and (3) initiating a child placement proceeding under MIFPA has not been possible.

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16	<p>Inquiry of Tribal lineage; notice to Tribes, parents, and Indian custodians; access to files.</p> <p>Amends § 260.761.</p> <p>Subd. 1. Inquiry of Tribal lineage. Modifies terminology; adds that an individual petitioner may also inquire as to whether a child has Tribal lineage; adds that the inquiry must continue throughout the involvement of the child-placing agency or individual petitioner.</p> <p>Subd. 2. Notice to Tribes of services or court proceedings involving an Indian child. Modifies terminology; adds information that must be included in the initial notice to the child’s Tribe; requires notice to all Tribes for which the child may have lineage. Requires the child-placing agency to continue to include the child’s Tribe in service planning and case updates. Makes technical changes.</p> <p>Paragraphs (d) and (e) specify service requirements prior to admit-deny hearings, allow a Tribe to request up to 20 additional days to prepare for an admit-deny hearing, and require the court to allow remote court appearances for certain parties.</p> <p>Subd. 3. Notice of potential preadoptive or adoptive placement. Makes technical and terminology changes; allows Tribal notification via certified mail; increases time for preadoptive or adoptive placement proceeding from ten to 20 days after receipt of notice.</p> <p>Subd. 4. Unknown father. Makes technical and terminology changes.</p> <p>Subd. 5. Proof of service of notice upon Tribe or secretary. Modifies terminology.</p> <p>Subd. 6. Indian Tribe’s right of intervention. Makes technical changes.</p> <p>Subd. 6a. Indian Tribe’s access to files. Requires the child-placing agency to, at any time during the agency’s involvement with an Indian child, upon request, fully cooperate with the Tribal social services agency to allow access to all files concerning the child. Specifies that the agency may require execution of an agreement with the Tribal agency to maintain the data according to statutes.</p> <p>Strikes subdivision 7.</p>
17	<p>County and Tribal agreements; maltreatment assessments and investigations of Indian children.</p> <p>Amends § 260.7611. Makes technical change.</p>

Section	Description
18	<p>Duty to prevent out-of-home placement and promote family reunification; active efforts.</p> <p>Amends § 260.762.</p> <p>Subd. 1. Active efforts. Clarifies that active efforts are not required for voluntary out-of-home placement or permanency.</p> <p>Subd. 2. Requirements for child-placing agencies and individual petitioners. Modifies terminology.</p> <p>Subd. 3. Required findings that active efforts were provided. Adds paragraph (a), requiring any party seeking a termination of parental rights, other permanency action, or placement with a person or entity who is not the Indian child's parent or Indian custodian to satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs, and that those efforts were unsuccessful.</p> <p>Paragraph (b) adds similar language from paragraph (a), and specifies that, to the extent possible, active efforts must be provided in line with the Tribe's social and cultural conditions and in partnership with the child, parents, extended family, and Tribe.</p> <p>Paragraph (c) makes technical, terminology, and clarifying changes regarding the court's determination of whether active efforts were made, and requires the court to ensure the provision of active efforts. Adds items to list of activities about which the court must make findings related to active efforts.</p>
19	<p>Determination of an Indian child's tribe.</p> <p>Amends § 260.765. Strikes language and inserts cross-reference to notice requirements in § 260.761.</p>
20	<p>Access to files.</p> <p>Amends § 260.765 by adding subd. 1b. Requires a child-placing agency, at any subsequent stage of involvement in an Indian child's case, to, upon request, fully cooperate with the Tribal social services agency to give access to all files concerning the child. Specifies that the agency may require execution of an agreement with the Tribal agency to maintain the data according to statutes.</p>
21	<p>Notice.</p> <p>Amends § 260.765, subd. 2. Modifies terminology; makes technical changes. Strikes language now moved to new subdivision established in section 20 of the act.</p>

Section	Description
22	<p>Notice of administrative review.</p> <p>Amends § 260.765, subd. 3. Adds notice and right of intervention in an administrative review of a voluntary placement.</p>
23	<p>Court requirements for consent.</p> <p>Amends § 260.765 by adding subd. 3a. Outlines requirements for valid consent when a parent or Indian custodian voluntarily consents to a foster care placement or termination of parental rights. Requires the court to find that the parent or Indian custodian fully understood the explanation. Specifies that consent given prior to or within ten days of birth is not valid.</p>
24	<p>Withdrawal of consent to voluntary placement; return of child in voluntary placement.</p> <p>Amends § 260.765, subd. 4. Specifies that any parent or Indian custodian may withdraw consent to a child placement at any time and that the child must be returned upon the withdrawal of consent; makes technical changes.</p>
25	<p>Withdrawal of consent to voluntary termination of parental rights or adoptive placement; return of custody.</p> <p>Amends § 260.765 by adding subd. 4a. Allows a parent to withdraw consent in a voluntary termination of parental rights or adoption proceeding for an Indian child, for any reason and at any time before the final decree is entered, and requires the child to be returned to the parent.</p>
26	<p>Collateral attack; vacation of decree and return of custody; limitations.</p> <p>Amends § 260.765 by adding subd. 4b. Allows a parent to withdraw consent after a final decree of adoption if consent was obtained through fraud or duress; allows a parent to petition to vacate the decree. Requires the court to vacate the decree and return the child to the parent if the court finds that consent was obtained through fraud or duress. Specifies that this does not apply to an adoption that has been effective for at least two years.</p>
27	<p>Involuntary child placement proceedings.</p> <p>Amends § 260.771.</p> <p>Subd. 1. Indian Tribe jurisdiction. Makes technical changes; adds clause permitting concurrent Tribal-state jurisdiction when the Tribe allows it; adds paragraph establishing concurrent jurisdiction when an Indian child resides or is domiciled outside of the Tribe’s reservation.</p>

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Subd. 1a. Active efforts. Requires the child-placing agency or individual petitioner to ensure that active efforts are provided to support reunification and preserve the child's placement and relationship with the child's family.

Subd. 1b. Placement preference. Requires the child-placing agency or petitioner to follow placement preferences in statute.

Subd. 1c. Identification of extended family members. Requires the child-placing agency or petitioner to make active efforts to identify and locate a child's siblings and extended family members, explore placement with an extended family member, and facilitate the continued involvement of extended family in the child's life.

Subd. 1d. Notice of hearings. Requires notice provisions in previous section to apply to involuntary child placement proceedings for Indian children; states who must be notified of the right to participate in all hearings.

Subd. 2. Court determination of Tribal affiliation of child. Makes technical changes.

Subd. 2a. Right of intervention. Allows an Indian child's Tribe, parent or parents, and Indian custodian the right to intervene in any state court child placement proceeding for an Indian child.

Subd. 2b. Appointment of counsel. Establishes the right for a parent or Indian custodian to be represented by an attorney in any state court child placement proceeding; allows for an attorney to be appointed if the parent or custodian cannot afford an attorney. Requires any child age ten or older to have court-appointed counsel in a state court child placement proceeding.

Subd. 2c. Examination of reports or other documents. Establishes right of all parties to examine all reports or other relevant documents filed with the court.

Subd. 2d. Tribal access to files and other documents. Requires the child-placing agency or petitioner to give the child's Tribal agency full cooperation and access to all files concerning the child. Specifies that the agency may require execution of an agreement with the Tribal agency to maintain the data according to statutes.

Subd. 3. Transfer of proceedings. Makes technical changes; requires the court to transfer any child placement proceeding to the jurisdiction of the Tribe, absent good cause to the contrary.

Subd. 3a. Good cause to deny transfer. Makes technical changes.

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Subd. 4. Effect of Tribal court placement orders. Makes technical changes. Requires the court to give full faith and credit to Tribal court placement and services orders; requires the court to give full faith and credit to any public Tribal actions, records, and proceedings under MIFPA and to give deference to the Tribe's interpretation of its laws. Requires the court to transfer the proceedings to the Tribal court if further interpretation of a Tribe's laws is necessary.

Subd. 5. Indian Tribe agreements. Makes technical changes.

Subd. 6. Qualified expert witness and evidentiary requirements. Makes technical changes. Adds paragraph requiring the court, in permanency proceedings, to determine by clear and convincing evidence, with testimony from a qualified expert witness, that continued custody with the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Establishes that qualified expert witness testimony is provided separately in involuntary foster care and permanency proceedings.

Subd. 7. Order of placement preference; deviation. Strikes reference to ICWA placement preferences and inserts placement preferences for when the custody of an Indian child is removed from the child's parent.

Subd. 8. Guardians ad litem for Indian children. Requires guardians ad litem to be specifically trained in the provision of services to Indian children and families.

28 **Improper removal of child, declination of jurisdiction, invalidation, return of custody.**

Proposes coding for § 260.774.

Subd. 1. Improper removal. Requires the court to decline jurisdiction and immediately return the child to the child's parent or Indian custodian in any proceeding where a child was improperly removed.

Subd. 2. Invalidation. Requires invalidation of any order of out-of-home placement or permanency placement upon a showing by a preponderance of the evidence that listed MIFPA procedures and requirements were violated. Allows the Indian child, the child's parent or parents, guardian, Indian custodian, or Tribe to file a petition for invalidation. Upon finding a violation of MIFPA sections, requires the court to dismiss the petition without prejudice and return the child to the care of the parent or parents, or Indian custodian, unless the child would be subjected to imminent damage or harm.

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	<p>Subd. 3. Return of custody following adoption. Establishes procedures and requirements for return of custody when a final decree of adoption is vacated, set aside, or if the adoptive parents' parental rights are terminated.</p>
29	<p>County and Tribal agreements; maltreatment assessments and investigations of Indian children.</p> <p>Proposes coding for § 260.7745. Allows a Tribe and a county to enter into a written agreement transferring responsibility from the county to the Tribe for screening and initial response to maltreatment reports regarding an Indian child residing in the county where the child's reservation is located.</p>
30	<p>Records; information availability.</p> <p>§ 260.781. Adds requirement for the court to include an affidavit requesting anonymity with the other information provided to DHS and the Secretary of the Interior. Requires DHS and requests the Secretary to ensure confidentiality of the information provided. Establishes circumstances under which disclosure of necessary information may occur and required procedures.</p> <p>Adds subdivision that requires the court that entered a final adoption decree to inform an Indian individual 18 years of age or older, upon the individual's application, of the Tribal affiliation of the individual's biological parents and any other necessary information related to the individual's Tribal rights or relationship.</p>
31	<p>Special focus grants.</p> <p>Amends § 260.785, subd. 2. Modifies terminology.</p>
32	<p>Grant applications.</p> <p>Amends § 260.791. Modifies terminology.</p>
33	<p>Types of services.</p> <p>Amends § 260.795, subd. 1. Modifies terminology.</p>
34	<p>Continued legal responsibility of child-placing agencies.</p> <p>Amends § 260.805. Modifies terminology.</p>
35	<p>Special focus grants.</p> <p>Amends § 260.821, subd. 2. Modifies terminology.</p>
36	<p>Expiration.</p> <p>Amends § 260.835, subd. 2. Removes expiration date and specifies that the American Indian Child Welfare Advisory Council does not expire.</p>

Section	Description
37	Severability. Proposes coding for § 260.836. Allows for severability in the event that any provision of MIFPA is held invalid or unconstitutional.
38	Revisor instruction. Instructs the revisor to renumber specified sections, add specified titles to statutory sections, and make any necessary cross-reference changes.
39	Repealer. Repeals § 260.755, subd. 17 (definition of “private child-placing agency”).



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