

**SENATE  
STATE OF MINNESOTA  
NINETY-THIRD SESSION**

**S.F. No. 667**

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<b>DATE</b>	<b>D-PG</b>	<b>OFFICIAL STATUS</b>
01/25/2023	368	Introduction and first reading Referred to Health and Human Services

1.1 A bill for an act

1.2 relating to children; making changes to the Minnesota Indian Family Preservation

1.3 Act; amending Minnesota Statutes 2022, sections 260.753; 260.755, subdivisions

1.4 1a, 3, 20, 22, by adding subdivisions; 260.761; 260.7611; 260.762; 260.765,

1.5 subdivisions 1, 2, 3, 4, by adding subdivisions; 260.771; 260.781; 260.785,

1.6 subdivision 2; 260.791; 260.795, subdivision 1; 260.805; 260.821, subdivision 2;

1.7 260.835, subdivision 2; proposing coding for new law in Minnesota Statutes,

1.8 chapter 260; repealing Minnesota Statutes 2022, section 260.755, subdivision 17.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. **[260.752] APPLICABILITY.**

1.11 Unless otherwise stated, sections 260.751 to 260.835 and the federal Indian Child Welfare

1.12 Act are applicable without exception in any child custody proceeding involving an Indian

1.13 child where custody is granted to someone other than a parent or an Indian custodian.

1.14 Nothing in sections 260.751 to 260.835 is intended to apply to custody actions between

1.15 parents or between a parent and Indian custodian.

1.16 Sec. 2. Minnesota Statutes 2022, section 260.753, is amended to read:

1.17 **260.753 PURPOSES.**

1.18 The purposes of ~~Laws 2015, chapter 78,~~ the Minnesota Indian Family Preservation Act

1.19 are to (1) protect the long-term interests, as defined by the Tribes, of Indian children, their

1.20 families as defined by law or custom, and the child's Tribe; and (2) preserve the Indian

1.21 family and Tribal identity, including an understanding that Indian children are damaged if

1.22 family and child Tribal identity and contact are denied. Indian children are the future of the

1.23 Tribes and are vital to their very existence.

2.1 Sec. 3. [260.754] POLICY ON TRIBAL-STATE RELATIONS.

2.2 (a) The state of Minnesota acknowledges federally recognized Indian Tribes as sovereign  
2.3 political entities that predate the existence of the United States and that have retained inherent  
2.4 sovereign authority to pass their own laws, maintain their own systems of governance, and  
2.5 determine their own jurisdiction. The sovereign authority of Tribes may only be limited by  
2.6 the federal government and not by any action of the state, including the state legislature and  
2.7 state courts.

2.8 (b) Inherently, as members of Indian Tribes recognized by the federal government,  
2.9 Indian people have rights and privileges as members of their Tribe which the state of  
2.10 Minnesota recognizes and protects.

2.11 (c) Indian people have a right to be protected from being disfranchised or deprived of  
2.12 any of the rights and privileges secured to any citizen in the state and to have the recognition  
2.13 and protection of the rights and privileges flowing from their membership in an Indian Tribe  
2.14 by any state action.

2.15 (d) The state of Minnesota recognizes all federally recognized Indian Tribes as having  
2.16 the inherent authority to determine their own jurisdiction for any and all Indian child custody  
2.17 or child placement proceedings regardless of whether the Tribe's members are on or off the  
2.18 reservation and regardless of the procedural posture of the proceeding.

2.19 (e) The state of Minnesota has long recognized the importance of Indian children to their  
2.20 Tribes not only as members of Tribal families and communities, but also as the Tribe's  
2.21 greatest resource as future members and leaders of the Tribe. The vitality of Indian children  
2.22 in the state of Minnesota is essential to the health and welfare of both the state and the Tribes  
2.23 and is essential to the future welfare and continued existence of the child's Tribe.

2.24 (f) The state of Minnesota recognizes that the historical deprivation of rights of Indian  
2.25 people and Indian Tribes have led to disparate out-of-home placement of Indian children.

2.26 Sec. 4. Minnesota Statutes 2022, section 260.755, subdivision 1a, is amended to read:

2.27 Subd. 1a. **Active efforts.** "Active efforts" means a rigorous and concerted level of effort  
2.28 that is ongoing throughout the involvement of the ~~local social services~~ child-placing agency  
2.29 to continuously involve the Indian child's Tribe and that uses the prevailing social and  
2.30 cultural values, conditions, and way of life of the Indian child's Tribe to preserve the Indian  
2.31 child's family and prevent placement of an Indian child and, if placement occurs, to return  
2.32 the Indian child to the child's family at the earliest possible time. Active efforts ~~sets~~ under  
2.33 section 260.762 requires a higher standard than reasonable efforts to preserve the family,

3.1 prevent breakup of the family, and reunify the family, according to section 260.762. Active  
 3.2 efforts ~~includes~~ include reasonable efforts as required by Title IV-E of the Social Security  
 3.3 Act, United States Code, title 42, sections 670 to 679c.

3.4 Sec. 5. Minnesota Statutes 2022, section 260.755, subdivision 3, is amended to read:

3.5 Subd. 3. **Child placement proceeding.** (a) "Child placement proceeding" includes a  
 3.6 judicial proceeding which could result in the following:

3.7 ~~(a)~~ (1) "adoptive placement," means meaning the permanent placement of an Indian  
 3.8 child for adoption, including an action resulting in a final decree of adoption;

3.9 ~~(b)~~ (2) "involuntary foster care placement," means meaning an action removing an Indian  
 3.10 child from its the child's parents or Indian custodian for temporary placement in a foster  
 3.11 home, institution, or the home of a guardian. The parent or Indian custodian cannot have  
 3.12 the Indian child returned upon demand, but parental rights have not been terminated;

3.13 ~~(c)~~ (3) "preadoptive placement," means meaning the temporary placement of an Indian  
 3.14 child in a foster home or institution after the termination of parental rights, before or instead  
 3.15 of adoptive placement; or

3.16 ~~(d)~~ (4) "termination of parental rights," means meaning an action resulting in the  
 3.17 termination of the parent-child relationship under section 260C.301.

3.18 (b) The ~~terms include~~ term child placement proceeding includes all placements where  
 3.19 Indian children are placed out-of-home or away from the care, custody, and control of their  
 3.20 parent or parents or Indian custodian that do not implicate custody between the parents.  
 3.21 Child placement proceeding also includes any placement based upon juvenile status offenses,  
 3.22 but do not include a placement based upon an act which if committed by an adult would be  
 3.23 deemed a crime, or upon an award of custody in a divorce proceeding to one of the parents.

3.24 Sec. 6. Minnesota Statutes 2022, section 260.755, is amended by adding a subdivision to  
 3.25 read:

3.26 Subd. 3a. **Child-placing agency.** "Child-placing agency" means a public, private, or  
 3.27 nonprofit legal entity: (1) providing assistance to a child and the child's parent or parents;  
 3.28 or (2) placing a child in foster care or for adoption on a voluntary or involuntary basis.

4.1 Sec. 7. Minnesota Statutes 2022, section 260.755, is amended by adding a subdivision to  
4.2 read:

4.3 Subd. 3b. **Child placement.** "Child placement" means placement of an Indian child on  
4.4 a voluntary or involuntary basis in foster care, preadoptive placement, or adoption by a  
4.5 child-placing agency, parent, parents, Indian custodian, or individual.

4.6 Sec. 8. Minnesota Statutes 2022, section 260.755, is amended by adding a subdivision to  
4.7 read:

4.8 Subd. 4a. **Custody.** "Custody" means the physical or legal custody, or both, of an Indian  
4.9 child under any applicable Tribal law, Tribal custom, or state law. A party may demonstrate  
4.10 the existence of custody by looking to Tribal law, Tribal custom, or state law.

4.11 Sec. 9. Minnesota Statutes 2022, section 260.755, is amended by adding a subdivision to  
4.12 read:

4.13 Subd. 5a. **Emergency proceeding.** "Emergency proceeding" means and includes any  
4.14 court action that involves an emergency removal or emergency placement of an Indian child.

4.15 Sec. 10. Minnesota Statutes 2022, section 260.755, is amended by adding a subdivision  
4.16 to read:

4.17 Subd. 5b. **Extended family member.** "Extended family member" is as defined by the  
4.18 law or custom of the Indian child's Tribe or, in the absence of any law or custom of the  
4.19 Tribe, is a person who has reached the age of 18 and who is the Indian child's grandparent,  
4.20 aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or  
4.21 second cousin, or stepparent.

4.22 Sec. 11. Minnesota Statutes 2022, section 260.755, is amended by adding a subdivision  
4.23 to read:

4.24 Subd. 6a. **Imminent physical damage or harm.** "Imminent physical damage or harm"  
4.25 means that a child is threatened with immediate and present conditions that are life  
4.26 threatening or likely to result in abandonment, sexual abuse, or serious physical injury.

4.27 Sec. 12. Minnesota Statutes 2022, section 260.755, is amended by adding a subdivision  
4.28 to read:

4.29 Subd. 16a. **Public act.** "Public act" means an act of legislation by a political body  
4.30 affecting the public as a whole.

5.1 Sec. 13. Minnesota Statutes 2022, section 260.755, subdivision 20, is amended to read:

5.2 Subd. 20. **Tribal court.** "Tribal court" means a court with jurisdiction over child custody  
 5.3 proceedings and which is either a court of Indian offenses, or a court established and operated  
 5.4 under the code or custom of an Indian Tribe, or any other administrative body of a Tribe  
 5.5 which is vested with authority over child custody proceedings. ~~Except as provided in section~~  
 5.6 ~~260.771, subdivision 5, nothing in this chapter shall be construed as conferring jurisdiction~~  
 5.7 ~~on an Indian Tribe.~~

5.8 Sec. 14. Minnesota Statutes 2022, section 260.755, subdivision 22, is amended to read:

5.9 Subd. 22. **Voluntary foster care placement.** "Voluntary foster care placement" means  
 5.10 a decision in which there has been participation by a ~~local social services~~ child-placing  
 5.11 ~~agency or private child-placing agency~~ resulting in the temporary placement of an Indian  
 5.12 child away from the home of the child's parents or Indian custodian in a foster home,  
 5.13 institution, or the home of a guardian, and the parent or Indian custodian may have the child  
 5.14 returned upon demand.

5.15 Sec. 15. **[260.758] EMERGENCY REMOVAL OR PLACEMENT OF INDIAN**  
 5.16 **CHILD; TERMINATION; APPROPRIATE ACTION.**

5.17 Subdivision 1. **Emergency removal or placement permitted.** Nothing in sections  
 5.18 260.751 to 260.835 shall be construed to prevent the emergency removal of an Indian child  
 5.19 from the Indian child's parent or Indian custodian, including an Indian child who is a resident  
 5.20 of or is domiciled on a reservation but temporarily located off the reservation, or the  
 5.21 emergency placement of the Indian child in a foster home or institution under sections  
 5.22 260.751 to 260.835, in order to prevent imminent serious physical damage or harm to the  
 5.23 Indian child.

5.24 Subd. 2. **Temporary emergency jurisdiction of state courts.** (a) The child placement  
 5.25 agency or court shall ensure that the emergency removal or placement terminates immediately  
 5.26 when removal or placement is no longer necessary to prevent imminent physical damage  
 5.27 or harm to the Indian child. The child placement agency or court shall expeditiously initiate  
 5.28 a child custody proceeding subject to the provisions of sections 260. 751 to 260.835, transfer  
 5.29 the child to the jurisdiction of the appropriate Indian Tribe, or return the Indian child to the  
 5.30 Indian child's parent or Indian custodian as may be appropriate.

5.31 (b) If the Indian child is a resident of or is domiciled on a reservation but temporarily  
 5.32 located off the reservation, a court of this state has only temporary emergency jurisdiction  
 5.33 until the Indian child is transferred to the jurisdiction of the appropriate Indian Tribe unless

6.1 the Indian child's Tribe has expressly declined to exercise its jurisdiction, or the Indian child  
6.2 is restored to the Indian child's parent or Indian custodian.

6.3 Subd. 3. **Petition for emergency removal; placement requirements.** A petition for a  
6.4 court order authorizing the emergency removal or continued emergency placement of an  
6.5 Indian child, or the petition's accompanying documents, must contain a statement of the  
6.6 risk of imminent physical damage or harm to the Indian child and any evidence that the  
6.7 emergency removal or placement continues to be necessary to prevent imminent physical  
6.8 damage or harm to the Indian child. The petition or its accompanying documents must also  
6.9 contain the following information:

6.10 (1) the name, age, and last known address of the Indian child;

6.11 (2) the name and address of the Indian child's parents and Indian custodians, if any;

6.12 (3) the steps taken to provide notice to the Indian child's parents, Indian custodians, and  
6.13 Tribe about the emergency proceeding;

6.14 (4) if the Indian child's parents and Indian custodians are unknown, a detailed explanation  
6.15 of what efforts have been made to locate and contact them;

6.16 (5) the residence and domicile of the Indian child;

6.17 (6) if either the residence or domicile of the Indian child is believed to be on a reservation  
6.18 or in an Alaska Native village, the name of the Tribe affiliated with that reservation or  
6.19 village;

6.20 (7) the Tribal affiliation of the Indian child and of the Indian child's parents or Indian  
6.21 custodians;

6.22 (8) a specific and detailed account of the circumstances that led the agency responsible  
6.23 for the emergency removal of the Indian child to take that action;

6.24 (9) if the child is believed to reside or be domiciled on a reservation where the Tribe  
6.25 exercises exclusive jurisdiction over Indian child custody matters, a statement of the efforts  
6.26 that have been made and are being made to contact the Tribe and transfer the Indian child  
6.27 to the Tribe's jurisdiction; and

6.28 (10) a statement of the efforts that have been taken to assist the Indian child's parents or  
6.29 Indian custodians so that the Indian child may safely be returned to their custody.

6.30 Subd. 4. **Emergency proceeding requirements.** (a) The court shall hold a hearing no  
6.31 later than 72 hours, excluding weekends and holidays, after the removal of the Indian child.

7.1 The court shall determine whether the emergency removal continues to be necessary to  
 7.2 prevent imminent physical damage or harm to the Indian child.

7.3 (b) The court shall hold additional hearings whenever new information indicates that  
 7.4 the emergency situation has ended and at any court hearing during the emergency proceeding  
 7.5 to determine whether the emergency removal or placement is no longer necessary to prevent  
 7.6 imminent physical damage or harm to the Indian child.

7.7 Subd. 5. **Termination of emergency removal or placement.** (a) An emergency removal  
 7.8 or placement of an Indian child must immediately terminate once the child-placing agency  
 7.9 or court possesses sufficient evidence to determine that the emergency removal or placement  
 7.10 is no longer necessary to prevent imminent physical damage or harm to the Indian child  
 7.11 and the Indian child shall be immediately returned to the custody of the Indian child's parent  
 7.12 or Indian custodian.

7.13 (b) An emergency removal or placement ends when the Indian child is transferred to  
 7.14 the jurisdiction of the Indian child's Tribe, or when the court orders, after service upon the  
 7.15 Indian child's parents, Indian custodian, and Indian child's Tribe, that the Indian child shall  
 7.16 be placed in foster care upon a determination supported by clear and convincing evidence,  
 7.17 including testimony by a qualified expert witness, that custody of the Indian child by the  
 7.18 Indian child's parent or Indian custodian is likely to result in serious emotional or physical  
 7.19 damage to the Indian child.

7.20 (c) In no instance shall emergency removal or emergency placement of an Indian child  
 7.21 extend beyond 30 days unless the court finds by a showing of clear and convincing evidence  
 7.22 that: (1) continued emergency removal or placement is necessary to prevent imminent  
 7.23 physical damage or harm to the Indian child; (2) the court has been unable to transfer the  
 7.24 proceeding to the jurisdiction of the Indian child's Tribal court; and (3) it has not been  
 7.25 possible to initiate a child custody proceeding with all of the protections under sections  
 7.26 260.751 to 260.835, including obtaining the testimony of a qualified expert witness.

7.27 Sec. 16. Minnesota Statutes 2022, section 260.761, is amended to read:

7.28 **~~260.761 SOCIAL SERVICES AGENCY AND PRIVATE LICENSED~~**  
 7.29 **~~CHILD-PLACING AGENCY INQUIRY OF TRIBAL LINEAGE; NOTICE TO~~**  
 7.30 **~~TRIBES, PARENTS, AND INDIAN CUSTODIANS; ACCESS TO FILES.~~**

7.31 Subdivision 1. **Inquiry of Tribal lineage.** ~~The local social services agency or private~~  
 7.32 ~~licensed~~ child-placing agency or individual petitioner shall inquire of the child, the child's  
 7.33 parents and custodians, and other appropriate persons whether there is any reason to believe

8.1 that a child brought to the agency's attention may have lineage to an Indian Tribe. This  
 8.2 inquiry shall occur at the time the child comes to the attention of the ~~local social services~~  
 8.3 child-placing agency or individual petitioner and shall continue throughout the involvement  
 8.4 of the child-placing agency or individual petitioner.

8.5 Subd. 2. ~~Agency and court notice to Tribes~~ **Notice to Tribes of services or court**  
 8.6 **proceedings involving an Indian child.** (a) When a ~~local social services~~ child-placing  
 8.7 agency has information that a family assessment or investigation being conducted may  
 8.8 involve an Indian child, the ~~local social services~~ child-placing agency shall notify the Indian  
 8.9 child's Tribe of the family assessment or investigation according to section 260E.18. Initial  
 8.10 notice shall be provided by telephone and by email or facsimile and shall include the child's  
 8.11 full name and date of birth; the full names and dates of birth of the child's biological parents;  
 8.12 and if known the full names and dates of birth of the child's grandparents and of the child's  
 8.13 Indian custodian. If information regarding the child's grandparents or Indian custodian is  
 8.14 not immediately available, the child-placing agency shall continue to request this information  
 8.15 and shall notify the Tribe when it is received. Notice shall be provided to all Tribes to which  
 8.16 the child may have any Tribal lineage. The ~~local social services~~ child-placing agency shall  
 8.17 request that the Tribe or a designated Tribal representative participate in evaluating the  
 8.18 family circumstances, identifying family and Tribal community resources, and developing  
 8.19 case plans. The child-placing agency shall continue to include the Tribe in service planning  
 8.20 and updates as to the progress of the case.

8.21 (b) When a ~~local social services~~ child-placing agency has information that a child  
 8.22 receiving services may be an Indian child, the ~~local social services~~ child-placing agency  
 8.23 shall notify the Tribe by telephone and by email or facsimile of the child's full name and  
 8.24 date of birth, the full names and dates of birth of the child's biological parents, and, if known,  
 8.25 the full names and dates of birth of the child's grandparents and of the child's Indian  
 8.26 custodian. This notification must be provided so the Tribe can determine if the child is  
 8.27 ~~enrolled in the Tribe~~ a member or eligible for membership in the Tribe, and must be provided  
 8.28 within seven days. If information regarding the child's grandparents or Indian custodian is  
 8.29 not available within the seven-day period, the ~~local social services~~ child-placing agency  
 8.30 shall continue to request this information and shall notify the Tribe when it is received.  
 8.31 Notice shall be provided to all Tribes to which the child may have any Tribal lineage. ~~If the~~  
 8.32 ~~identity or location of the child's parent or Indian custodian and Tribe cannot be determined,~~  
 8.33 ~~the local social services agency shall provide the notice required in this paragraph to the~~  
 8.34 ~~United States secretary of the interior.~~



9.1 (c) ~~In accordance with sections 260C.151 and 260C.152~~ In all child placement  
 9.2 proceedings, when a court has reason to believe that a child placed in emergency protective  
 9.3 care is an Indian child, the court administrator or a designee shall, as soon as possible and  
 9.4 before a hearing takes place, notify the Tribal social services agency by telephone and by  
 9.5 email or facsimile of the date, time, and location of the emergency protective ~~ease~~ care or  
 9.6 other initial hearing. The court shall make efforts to allow appearances by telephone for  
 9.7 Tribal representatives, parents, and Indian custodians.

9.8 (d) The child-placing agency or individual petitioner shall affect service of any petition  
 9.9 governed by sections 260.751 to 260.835 by certified mail or registered mail, return receipt  
 9.10 requested upon the Indian child's parents, Indian custodian, and Indian child's Tribe at least  
 9.11 10 days before the admit-deny hearing is held. If the identity or location of the Indian child's  
 9.12 parents or Indian custodian and Tribe cannot be determined, the child-placing agency shall  
 9.13 provide the notice required in this paragraph to the United States Secretary of the Interior,  
 9.14 Bureau of Indian Affairs by certified mail, return receipt requested.

9.15 (e) A Tribe may request up to 20 additional days to prepare for the admit-deny hearing.  
 9.16 The court shall allow appearances by telephone, Zoom, or other electronic medium for  
 9.17 Tribal representatives, the child's Indian parents, or the Indian custodian.

9.18 ~~(d)~~ (f) ~~A local social services~~ child-placing agency or individual petitioner must provide  
 9.19 the notices required under this subdivision at the earliest possible time to facilitate  
 9.20 involvement of the Indian child's Tribe. Nothing in this subdivision is intended to hinder  
 9.21 the ability of the ~~local social services~~ child-placing agency, individual petitioner, and the  
 9.22 court to respond to an emergency situation. Lack of participation by a Tribe shall not prevent  
 9.23 the Tribe from intervening in services and proceedings at a later date. A Tribe may participate  
 9.24 at any time. At any stage of the ~~local social services~~ child-placing agency's involvement  
 9.25 with an Indian child, the agency shall provide full cooperation to the Tribal social services  
 9.26 agency, including disclosure of all data concerning the Indian child. Nothing in this  
 9.27 subdivision relieves the ~~local social services~~ child-placing agency of satisfying the notice  
 9.28 requirements in ~~the Indian Child Welfare Act~~ state or federal law.

9.29 Subd. 3. **Notice of potential preadoptive or adoptive placement.** In any ~~voluntary~~  
 9.30 adoptive or preadoptive placement proceeding ~~in which a local social services agency,~~  
 9.31 ~~private child-placing agency, petitioner in the adoption, or any other,~~ including voluntary  
 9.32 proceedings, where any party or participant has reason to believe that a child who is the  
 9.33 subject of an adoptive or preadoptive placement proceeding is or may be an "Indian child,"  
 9.34 as defined in section 260.755, subdivision 8, and United States Code, title 25, section  
 9.35 1903(4), the child-placing agency or person individual petitioner shall notify the Indian

10.1 child's ~~Tribal social services agency~~ Tribe by registered mail or certified mail with return  
 10.2 receipt requested of the pending proceeding and of the right of intervention under subdivision  
 10.3 6. If the identity or location of the child's Tribe cannot be determined, the notice must be  
 10.4 given to the United States Secretary of Interior in like manner, who will have 15 days after  
 10.5 receipt of the notice to provide the requisite notice to the Tribe. No preadoptive or adoptive  
 10.6 placement proceeding may be held until at least ten days after receipt of the notice by the  
 10.7 Tribe or the secretary. Upon request, the Tribe must be granted up to 20 additional days to  
 10.8 prepare for the proceeding. The child-placing agency or ~~notifying party~~ individual petitioner  
 10.9 shall include in the notice the identity of the birth parents and child absent written objection  
 10.10 by the birth parents. The ~~private~~ child-placing agency shall inform the birth parents of the  
 10.11 Indian child of any services available to the Indian child through the child's Tribal social  
 10.12 services agency, including child placement services, and shall additionally provide the birth  
 10.13 parents of the Indian child with all information sent from the Tribal social services agency  
 10.14 in response to the notice.

10.15 Subd. 4. **Unknown father.** If the ~~local social services agency, private~~ child-placing  
 10.16 agency, individual petitioner, the court, ~~petitioner~~, or any ~~other~~ party has reason to believe  
 10.17 that a child who is the subject of ~~an adoptive~~ a child placement proceeding is or may be an  
 10.18 Indian child but the father of the child is unknown and has not registered with the fathers'  
 10.19 adoption registry pursuant to section 259.52, the child-placing agency or ~~person~~ individual  
 10.20 petitioner shall provide to the Tribe believed to be the Indian child's Tribe information  
 10.21 sufficient to enable the Tribe to determine the child's eligibility for membership in the Tribe,  
 10.22 including, but not limited to, the legal and maiden name of the birth mother, her date of  
 10.23 birth, the names and dates of birth of her parents and grandparents, and, if available,  
 10.24 information pertaining to the possible identity, Tribal affiliation, or location of the birth  
 10.25 father.

10.26 Subd. 5. **Proof of service of notice upon Tribe or secretary.** In cases where ~~an~~ a  
 10.27 child-placing agency or party to an adoptive placement knows or has reason to believe that  
 10.28 a child is or may be an Indian child, proof of service upon the child's Tribe or the secretary  
 10.29 of interior must be filed with the adoption petition.

10.30 Subd. 6. **Indian Tribe's right of intervention.** In any ~~state court~~ child placement  
 10.31 proceeding ~~for the voluntary adoptive or preadoptive placement of an Indian child~~ under  
 10.32 sections 260.751 to 260.835, the Indian child's Tribe shall have a right to intervene at any  
 10.33 point in the proceeding.

10.34 Subd. 6a. **Indian Tribe's access to files.** At any stage of the child-placing agency's  
 10.35 involvement with an Indian child, the child-placing agency shall, upon request, give the

11.1 Tribal social services agency full cooperation including access to all files concerning the  
 11.2 Indian child. If the files contain confidential or private data, the child-placing agency may  
 11.3 require execution of an agreement with the Tribal social services agency to maintain the  
 11.4 data according to statutory provisions applicable to the data.

11.5 ~~Subd. 7. **Identification of extended family members.** Any agency considering placement~~  
 11.6 ~~of an Indian child shall make active efforts to identify and locate extended family members.~~

11.7 Sec. 17. Minnesota Statutes 2022, section 260.7611, is amended to read:

11.8 **260.7611 COUNTY AND TRIBAL AGREEMENTS; MALTREATMENT**  
 11.9 **ASSESSMENTS AND INVESTIGATIONS OF INDIAN CHILDREN.**

11.10 A Tribe and a county may enter a written agreement transferring responsibility for the  
 11.11 screening and initial response to a child maltreatment report regarding an Indian child  
 11.12 residing in the county where the child's reservation is located, from the county to the Tribe.  
 11.13 An agreement under this ~~subdivision~~ section shall include a provision clarifying whether  
 11.14 the county or the Tribe is responsible for ongoing case management stemming from a child  
 11.15 maltreatment report.

11.16 Sec. 18. Minnesota Statutes 2022, section 260.762, is amended to read:

11.17 **260.762 DUTY TO PREVENT OUT-OF-HOME PLACEMENT AND PROMOTE**  
 11.18 **FAMILY REUNIFICATION; ACTIVE EFFORTS.**

11.19 Subdivision 1. **Active efforts.** Active efforts includes acknowledging traditional helping  
 11.20 and healing systems of an Indian child's Tribe and using these systems as the core to help  
 11.21 and heal the Indian child and family. Active efforts are not required to prevent voluntary  
 11.22 out-of-home placement and to effect voluntary permanency for the Indian child.

11.23 Subd. 2. **Requirements for ~~local social services~~ child-placing agencies.** A ~~local social~~  
 11.24 ~~services~~ child-placing agency shall:

11.25 (1) work with the Indian child's Tribe and family to develop an alternative plan to  
 11.26 out-of-home placement;

11.27 (2) before making a decision that may affect an Indian child's safety and well-being or  
 11.28 when contemplating out-of-home placement of an Indian child, seek guidance from the  
 11.29 Indian child's Tribe on family structure, how the family can seek help, what family and  
 11.30 Tribal resources are available, and what barriers the family faces at that time that could  
 11.31 threaten its preservation; and

12.1 (3) request participation of the Indian child's Tribe at the earliest possible time and  
12.2 request the Tribe's active participation throughout the case.

12.3 Subd. 3. **Required findings that active efforts were provided.** (a) Any party seeking  
12.4 to affect a termination of parental rights, other permanency action, or a placement where  
12.5 custody of an Indian child may be temporarily or permanently transferred to a person or  
12.6 entity who is not the Indian child's parent or Indian custodian, and where the Indian child's  
12.7 parent or Indian custodian cannot have the Indian child returned to their care upon demand,  
12.8 must satisfy the court that active efforts have been made to provide remedial services and  
12.9 rehabilitative programs designed to prevent the breakup of the Indian family and that these  
12.10 efforts have proved unsuccessful.

12.11 (b) A court shall not order an out-of-home or permanency placement for an Indian child  
12.12 unless the court finds that the ~~local social services~~ child-placing agency made active efforts  
12.13 to, as required by section 260.012 and this section, provide remedial services and  
12.14 rehabilitative programs designed to prevent the breakup of the Indian child's family, and  
12.15 that these efforts have proved unsuccessful. To the extent possible, active efforts must be  
12.16 provided in a manner consistent with the prevailing social and cultural conditions of the  
12.17 Indian child's Tribe and in partnership with the Indian child, Indian parents, extended family,  
12.18 and Tribe.

12.19 (c) Regardless of whether the Indian child's Tribe has intervened in the proceedings, the  
12.20 court, in determining whether the ~~local social services~~ child-placing agency made active  
12.21 efforts to preserve the Indian child's family for purposes of out-of-home placement and  
12.22 permanency, the court shall ensure the provision of active efforts designed to correct the  
12.23 conditions that lead to the out-of-home placement of the Indian child and shall make findings  
12.24 regarding whether the following activities were appropriate and necessary, and whether the  
12.25 ~~local social services~~ child-placing agency made appropriate and meaningful services, whether  
12.26 listed in this paragraph or not, available to the family based upon that family's specific  
12.27 needs:

12.28 (1) whether the ~~local social services~~ child-placing agency made efforts at the earliest  
12.29 point possible to (i) identify whether a child may be an Indian child as defined in the Indian  
12.30 Child Welfare Act, United States Code, title 25, section 1903, and section 260.755,  
12.31 subdivision 8; and (ii) identify and request participation of the Indian child's Tribe at the  
12.32 earliest point possible and throughout the investigation or assessment, case planning,  
12.33 provision of services, and case completion;

13.1 (2) whether the ~~local social services~~ child-placing agency requested that a Tribally  
 13.2 designated representative with substantial knowledge of prevailing social and cultural  
 13.3 standards and child-rearing practices within the Tribal community evaluate the circumstances  
 13.4 of the Indian child's family ~~and~~, provided the Tribally designated representative with all  
 13.5 information available regarding the case, and requested that the Tribally designated  
 13.6 representative assist in developing a case plan that uses Tribal and Indian community  
 13.7 resources;

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

13.16 (4) whether the child-placing agency made early and ongoing efforts to identify, locate,  
 13.17 and include extended family members;

13.18 ~~(4)~~ (5) whether the ~~local social services~~ child-placing agency notified and consulted  
 13.19 with the Indian child's extended family members, as identified by the child, the child's  
 13.20 parents, or the Tribe; whether extended family members were consulted to provide support  
 13.21 to the child and parents, to inform the ~~local social services~~ child-placing agency and court  
 13.22 as to cultural connections and family structure, to assist in identifying appropriate cultural  
 13.23 services and supports for the child and parents, and to identify and serve as a placement and  
 13.24 permanency resource for the child; and if there was difficulty contacting or engaging with  
 13.25 extended family members, whether assistance was sought from the Tribe, the Department  
 13.26 of Human Services, or other agencies with expertise in working with Indian families;

13.27 ~~(5)~~ (6) whether the ~~local social services~~ child-placing agency provided services and  
 13.28 resources to relatives who are considered the primary placement option for an Indian child,  
 13.29 as agreed by the ~~local social services~~ child-placing agency and the Tribe, to overcome  
 13.30 barriers to providing care to an Indian child. Services and resources shall include but are  
 13.31 not limited to child care assistance, financial assistance, housing resources, emergency  
 13.32 resources, and foster care licensing assistance and resources; and

13.33 ~~(6)~~ (7) whether the ~~local social services~~ child-placing agency arranged for visitation to  
 13.34 occur, whenever possible, in the home of the Indian child's parent, Indian custodian, or

14.1 other family member or in another noninstitutional setting, in order to keep the child in  
 14.2 close contact with parents, siblings, and other relatives regardless of the child's age and to  
 14.3 allow the child and those with whom the child visits to have natural, unsupervised interaction  
 14.4 when consistent with protecting the child's safety; and whether the ~~local social services~~  
 14.5 child-placing agency consulted with a Tribal representative to determine and arrange for  
 14.6 visitation in the most natural setting that ensures the child's safety, when the child's safety  
 14.7 requires supervised visitation.

14.8 Sec. 19. Minnesota Statutes 2022, section 260.765, subdivision 1, is amended to read:

14.9 Subdivision 1. **Determination of Indian child's tribe.** ~~The local social services agency~~  
 14.10 ~~or private licensed~~ child-placing agency shall ~~determine whether a child brought to its~~  
 14.11 ~~attention for the purposes described in this section is an Indian child and the identity of the~~  
 14.12 ~~Indian child's Tribe~~ follow the notice provisions in section 260.761.

14.13 Sec. 20. Minnesota Statutes 2022, section 260.765, is amended by adding a subdivision  
 14.14 to read:

14.15 Subd. 1b. **Access to files.** At any subsequent stage of a child-placing agency's involvement  
 14.16 with an Indian child, the child-placing agency shall, upon request, give the Tribal social  
 14.17 services agency full cooperation including access to all files concerning the child. If the  
 14.18 files contain confidential or private data, the child-placing agency or individual may require  
 14.19 execution of an agreement with the Tribal social services agency that the Tribal social  
 14.20 services agency shall maintain the data according to statutory provisions applicable to the  
 14.21 data.

14.22 Sec. 21. Minnesota Statutes 2022, section 260.765, subdivision 2, is amended to read:

14.23 Subd. 2. **Notice.** When an Indian child is voluntarily placed in foster care, the ~~local social~~  
 14.24 ~~services~~ child-placing agency involved in the decision to place the child shall give notice  
 14.25 of the placement to the child's parent, parents, Indian custodian, and the Tribal social services  
 14.26 agency, ~~and the Indian custodian~~ within seven days of placement, excluding weekends and  
 14.27 holidays.

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

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

15.7 Sec. 22. Minnesota Statutes 2022, section 260.765, subdivision 3, is amended to read:

15.8 Subd. 3. **Notice of administrative review.** In an administrative review of a voluntary  
15.9 foster care placement, the Tribal social services agency of the child, the Indian custodian,  
15.10 and the parents of the child shall have notice and a right of intervention and participation  
15.11 in the review.

15.12 Sec. 23. Minnesota Statutes 2022, section 260.765, is amended by adding a subdivision  
15.13 to read:

15.14 Subd. 3a. **Court requirements for consent.** Where any parent or Indian custodian  
15.15 voluntarily consents to a foster care placement or to termination of parental rights, the  
15.16 consent shall not be valid unless executed in writing and recorded before a judge and  
15.17 accompanied by the presiding judge's certificate that the terms and consequences of the  
15.18 consent were fully explained in detail and were fully understood by the parent or Indian  
15.19 custodian. The court shall also certify that either the parent or Indian custodian fully  
15.20 understood the explanation in English or that it was interpreted into a language the parent  
15.21 or Indian custodian understood. Any consent given prior to, or within ten days after, birth  
15.22 of the Indian child shall not be valid.

15.23 Sec. 24. Minnesota Statutes 2022, section 260.765, subdivision 4, is amended to read:

15.24 Subd. 4. **Withdrawal of consent to voluntary placement; return of child in voluntary**  
15.25 **placement.** Any parent or Indian custodian may withdraw consent to a child placement at  
15.26 any time and, upon the withdrawal of consent, the child shall be returned to the parent or  
15.27 the Indian custodian. Upon demand by the parent or Indian custodian of an Indian child,  
15.28 ~~the local social services agency or private licensed child-placing agency~~ that placed the  
15.29 child shall return the child in voluntary foster care placement to the parent or Indian custodian  
15.30 within 24 hours of the receipt of the demand. If the request for return does not satisfy the  
15.31 requirement of section 260.755, subdivision 5, ~~the local social services agency or private~~  
15.32 ~~child-placing agency~~ shall immediately inform the parent or Indian custodian of the Indian  
15.33 child of the requirement.

16.1 Sec. 25. Minnesota Statutes 2022, section 260.765, is amended by adding a subdivision  
16.2 to read:

16.3 Subd. 4a. **Withdrawal of consent to voluntary termination of parental rights or**  
16.4 **adoptive placement; return of custody.** In any voluntary proceeding for termination of  
16.5 parental rights to, or adoptive placement of, an Indian child, the consent of the parent may  
16.6 be withdrawn for any reason at any time prior to the entry of a final decree of termination  
16.7 or adoption, as the case may be, and the child shall be returned to the parent.

16.8 Sec. 26. Minnesota Statutes 2022, section 260.765, is amended by adding a subdivision  
16.9 to read:

16.10 Subd. 4b. **Collateral attack; vacation of decree and return of custody;**  
16.11 **limitations.** After the entry of a final decree of adoption of an Indian child in any state  
16.12 court, the parent may withdraw consent upon the grounds that consent was obtained through  
16.13 fraud or duress and may petition the court to vacate the decree. Upon a finding that consent  
16.14 was obtained through fraud or duress, the court shall vacate the decree and return the child  
16.15 to the parent. No adoption which has been effective for at least two years may be invalidated  
16.16 under the provisions of this subdivision unless otherwise permitted under a provision of  
16.17 state law.

16.18 Sec. 27. Minnesota Statutes 2022, section 260.771, is amended to read:

16.19 **260.771 INVOLUNTARY CHILD PLACEMENT PROCEEDINGS.**

16.20 Subdivision 1. **Indian Tribe jurisdiction.** (a) An Indian Tribe has exclusive jurisdiction  
16.21 over a ~~all~~ child placement ~~proceeding~~ proceedings involving an Indian child who resides  
16.22 or is domiciled within the reservation of the Tribe, except where jurisdiction is otherwise  
16.23 vested in the state by existing federal law. ~~When~~

16.24 (b) Where an Indian child is a ward of the Tribal court, the Indian Tribe retains exclusive  
16.25 jurisdiction, notwithstanding the residence or domicile of the child unless the Tribe agrees  
16.26 to allow concurrent jurisdiction with the state.

16.27 (c) An Indian Tribe and the state of Minnesota share concurrent jurisdiction over a child  
16.28 placement proceeding involving an Indian child who resides or is domiciled outside of the  
16.29 reservation of the Tribe.

16.30 Subd. 1a. **Active efforts.** In any child-placing proceeding, the child-placing agency or  
16.31 individual petitioner shall ensure that appropriate active efforts as described in section  
16.32 260.762 are provided to the Indian parent or parents, Indian custodian, and family to support



17.1 reunification and preservation of the child's placement with and relationship to the Indian  
17.2 child's family.

17.3 Subd. 1b. **Placement preference.** In any child-placing proceeding, the child-placing  
17.4 agency or individual petitioner shall follow the placement preferences described in  
17.5 subdivision 7 or, where preferred placement is not available even with the provisions of  
17.6 active efforts, shall follow subdivision 7, paragraphs (k) to (p).

17.7 Subd. 1c. **Identification of extended family members.** Any child-placing agency or  
17.8 individual petitioner considering placement of an Indian child shall make active efforts to  
17.9 identify and locate siblings and extended family members and to explore placement with  
17.10 an extended family member and facilitate continued involvement in the Indian child's life.

17.11 Subd. 1d. **Notice of hearings.** The notice provisions in section 260.761 apply to all  
17.12 involuntary child placement proceedings under this section. An Indian child ten years of  
17.13 age and older, the Indian child's parent or parents, the Indian custodian, and the Indian  
17.14 child's Tribe shall have notice of the right to participate in all hearings regarding the Indian  
17.15 child.

17.16 Subd. 2. **Court determination of Tribal affiliation of child.** In any child placement  
17.17 proceeding, the court shall establish whether an Indian child is involved and the identity of  
17.18 the Indian child's Tribe. ~~This chapter~~ Sections 260.751 to 260.835 and the federal Indian  
17.19 Child Welfare Act are applicable without exception in any child custody proceeding, as  
17.20 defined in the federal act, involving an Indian child. ~~This chapter applies~~ Sections 260.751  
17.21 to 260.835 apply to child custody proceedings involving an Indian child whether the child  
17.22 is in the physical or legal custody of an Indian parent or parents, Indian custodian, Indian  
17.23 extended family member, or other person at the commencement of the proceedings. A court  
17.24 shall not determine the applicability of ~~this chapter~~ sections 260.751 to 260.835 or the  
17.25 federal Indian Child Welfare Act to a child custody proceeding based upon whether an  
17.26 Indian child is part of an existing Indian family or based upon the level of contact a child  
17.27 has with the child's Indian Tribe, reservation, society, or off-reservation community.

17.28 Subd. 2a. **Right of intervention.** In any state court child placement proceeding of an  
17.29 Indian child, the Indian child's Tribe, parent or parents, and Indian custodian shall have the  
17.30 right to intervene at any point in the proceeding.

17.31 Subd. 2b. **Appointment of counsel.** (a) In any state court child placement proceeding,  
17.32 the parent or parents or Indian custodian shall have the right to be represented by an attorney.  
17.33 If the parent or parents or Indian custodian cannot afford an attorney and meet the  
17.34 requirements of section 611.17, an attorney will be appointed to represent them.

18.1 (b) In any state court child placement proceeding, any child ten years of age or older  
18.2 shall have the right to court-appointed counsel.

18.3 Subd. 2c. Examination of reports or other documents. Each party to a proceeding  
18.4 under this section involving an Indian child shall have the right to examine all the reports  
18.5 or other documents filed with the court upon which any decision with respect to the action  
18.6 may be based.

18.7 Subd. 2d. Tribal access to files and other documents. At any subsequent stage of the  
18.8 child-placing agency involvement with an Indian child, the child-placing agency or individual  
18.9 shall, upon request, give the Tribal social services agency full cooperation including access  
18.10 to all files concerning the Indian child. If the files contain confidential or private data, the  
18.11 child-placing agency or individual may require execution of an agreement with the Tribal  
18.12 social services agency specifying that the Tribal social services agency shall maintain the  
18.13 data according to statutory provisions applicable to the data.

18.14 Subd. 3. Transfer of proceedings. (a) In a ~~any child custody proceeding for: (1) the~~  
18.15 ~~termination of parental rights; or (2) the involuntary foster care placement of an Indian child~~  
18.16 ~~not within the jurisdiction of subdivision 1, the court, in the absence of good cause to the~~  
18.17 ~~contrary, shall transfer the proceeding to the jurisdiction of the Tribe absent objection by~~  
18.18 ~~either parent, upon.~~ The petition of either to transfer may be filed by the Indian child's  
18.19 parent, the Indian custodian, or the Indian child's Tribe. The transfer is subject to declination  
18.20 by the Tribal court of the Tribe.

18.21 (b) In a proceeding for the preadoptive or adoptive placement of an Indian child not  
18.22 within the jurisdiction of subdivision 1, the court, in the absence of good cause to the  
18.23 contrary, shall transfer the proceeding to the jurisdiction of the Tribe. The transfer is subject  
18.24 to declination by the Tribal court of the Tribe. For the purposes of this subdivision,  
18.25 "preadoptive placement" and "adoptive placement" have the meanings give in section  
18.26 260.755, subdivision 3.

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

19.1 Subd. 3a. **Good cause to deny transfer.** (a) Establishing good cause to deny transfer  
 19.2 of jurisdiction to a Tribal court is a fact-specific inquiry to be determined on a case-by-case  
 19.3 basis. Socioeconomic conditions and the perceived adequacy of Tribal or Bureau of Indian  
 19.4 Affairs social services or judicial systems must not be considered in a determination that  
 19.5 good cause exists. The party opposed to transfer of jurisdiction to a Tribal court has the  
 19.6 burden to prove by clear and convincing evidence that good cause to deny transfer exists.  
 19.7 Opposition to a motion to transfer jurisdiction to Tribal court must be in writing and must  
 19.8 be served upon all parties.

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

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

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

19.18 Subd. 4. **Effect of Tribal court placement orders.** ~~To the extent that any child subject~~  
 19.19 ~~to sections 260.755 to 260.835 is otherwise eligible for social services, orders of a Tribal~~  
 19.20 ~~court concerning placement of such child shall have the same force and effect as orders of~~  
 19.21 ~~a court of this state.~~ (a) The court shall give full faith and credit to Tribal court placement  
 19.22 orders. In any case where the Tribal court orders placement ~~through a local social services~~  
 19.23 ~~agency, the court shall provide to~~ and services, including but not limited to case planning  
 19.24 services, full faith and credit of the Tribal court's order shall be provided so long as the local  
 19.25 agency county of financial responsibility was provided notice and an opportunity to be heard  
 19.26 regarding the placement expenses. Determination of county of financial responsibility for  
 19.27 the placement shall be determined by the ~~local social services~~ child-placing agency in  
 19.28 accordance with section 256G.02, subdivision 4. Disputes concerning the county of financial  
 19.29 responsibility shall be settled in the manner prescribed in section 256G.09.

19.30 (b) The court shall give full faith and credit to the public acts, records, and judicial  
 19.31 proceedings of any Indian Tribe in all proceedings under sections 260.755 to 260.835. The  
 19.32 courts shall give deference to the Tribe's interpretation of the Tribe's own unique system of  
 19.33 laws. If further interpretation of a Tribe's laws or order is required, the court shall transfer

20.1 the proceedings to the jurisdiction of the Tribal court for interpretation of the Tribal court's  
20.2 order.

20.3 Subd. 5. **Indian Tribe agreements.** The commissioner or the local social service agency  
20.4 is hereby authorized to enter into agreements with Indian Tribes ~~pursuant to United States~~  
20.5 ~~Code, title 25, section 1919,~~ respecting care and custody of Indian children and jurisdiction  
20.6 over child custody proceedings, including agreements which may provide for orderly transfer  
20.7 of jurisdiction on a case-by-case basis and agreements which provide for concurrent  
20.8 jurisdiction between the state and an Indian Tribe.

20.9 Subd. 6. **Qualified expert witness and evidentiary requirements.** (a) In an involuntary  
20.10 foster care placement proceeding, the court must determine by clear and convincing evidence,  
20.11 including testimony of a qualified expert witness, that continued custody of the child by the  
20.12 parent or Indian custodian is likely to result in serious emotional damage or serious physical  
20.13 damage to the child as defined in the Indian Child Welfare Act of 1978, United States Code,  
20.14 title 25, section 1912(e).

20.15 In a termination of parental rights proceeding, the court must determine by evidence  
20.16 beyond a reasonable doubt, including testimony of a qualified expert witness, that continued  
20.17 custody of the child by the parent or Indian custodian is likely to result in serious emotional  
20.18 damage or serious physical damage to the child ~~as defined in the Indian Child Welfare Act~~  
20.19 ~~of 1978, United States Code, title 25, section 1912(f).~~

20.20 In an involuntary permanent transfer of legal and physical custody proceeding, permanent  
20.21 custody to the agency proceedings, temporary custody to the agency, or other permanency  
20.22 proceedings, the court must determine by clear and convincing evidence, including testimony  
20.23 of a qualified expert witness, that the continued custody of the Indian child by the Indian  
20.24 child's parent or parents or Indian custodian is likely to result in serious emotional damage  
20.25 or serious physical damage to the child. Qualified expert witness testimony is not required  
20.26 where custody is transferred to the Indian child's parent.

20.27 Testimony of a qualified expert witness shall be provided for involuntary foster care  
20.28 placement and permanency proceedings independently.

20.29 (b) The ~~local social services~~ child-placing agency, individual petitioner, or any other  
20.30 party shall make diligent efforts to locate and present to the court a qualified expert witness  
20.31 designated by the Indian child's Tribe. The qualifications of a qualified expert witness  
20.32 designated by the Indian child's Tribe are not subject to a challenge in Indian child custody  
20.33 proceedings.

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

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

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

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

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

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

21.26 **Subd. 7. Order of placement preference; deviation.** (a) ~~The court must follow the~~  
21.27 ~~order of placement preferences required by the Indian Child Welfare Act of 1978, United~~  
21.28 ~~States Code, title 25, section 1915, when placing an Indian child. In all proceedings where~~  
21.29 ~~custody of the Indian child may be removed from the parent, the Indian child shall be placed~~  
21.30 ~~in the least restrictive setting which most approximates a family and in which the Indian~~  
21.31 ~~child's special needs, if any, may be met. The Indian child shall also be placed within~~  
21.32 ~~reasonable proximity to the Indian child's home, taking into account any special needs of~~  
21.33 ~~the Indian child.~~

22.1 (b) In the case of a placement under paragraph (c) or (d), if the Indian child's Tribe has  
22.2 established a different order of placement preference by resolution, the child-placing agency  
22.3 and the court shall recognize the Indian child's Tribe's order of placement in the form  
22.4 provided by the Tribe.

22.5 (c) Preference shall be given, in the absence of good cause to the contrary, to a placement  
22.6 with:

22.7 (1) a noncustodial parent or Indian custodian;

22.8 (2) a member of the child's extended family;

22.9 (3) a foster home licensed, approved, or specified by the Indian child's Tribe;

22.10 (4) an Indian foster home licensed or approved by an authorized non-Indian licensing  
22.11 authority; or

22.12 (5) an institution for children approved by an Indian Tribe or operated by an Indian  
22.13 organization which has a program suitable to meet the Indian child's needs.

22.14 (d) In any adoptive placement, transfer of custody placement, or other permanency  
22.15 placement of an Indian child, a preference shall be given, in the absence of good cause to  
22.16 the contrary, to a placement with:

22.17 (1) the Indian child's noncustodial parent or Indian custodian;

22.18 (2) a member of the child's extended family;

22.19 (3) other members of the Indian child's Tribe; or

22.20 (4) other persons or entities recognized as appropriate to be a permanency resource for  
22.21 the Indian child, by the Indian child's parent or parents, Indian custodian, or Indian Tribe.

22.22 (e) The county shall defer to the judgment of the Indian child's Tribe as to the suitability  
22.23 of a placement.

22.24 (f) The court shall consider the preference of the Indian child or parent.

22.25 (g) The standards to be applied in meeting the preference requirements of this subdivision  
22.26 shall be the prevailing social and cultural standards of the Indian community in which the  
22.27 parent or extended family resides or with which the parent or extended family members  
22.28 maintain social and cultural ties.

22.29 (h) Whenever an Indian child is removed from a foster care home or institution for the  
22.30 purpose of further foster care, preadoptive, or adoptive placement, the placement shall be  
22.31 in accordance with the placement preferences, except in the case where an Indian child is

23.1 being returned to the parent or Indian custodian from whose custody the Indian child was  
 23.2 originally removed.

23.3 (i) A record of each such placement under state law of an Indian child shall be maintained  
 23.4 by the county in which the placement was made and by the Department of Human Services  
 23.5 evidencing the efforts to comply with the order of preference specified in this section. The  
 23.6 record shall be made available at any time upon the request of the Secretary of the Interior  
 23.7 or the Indian child's Tribe.

23.8 ~~(b)~~ (j) The court ~~may place a child outside the order of~~ shall follow the placement  
 23.9 ~~preferences only if the court determines there is good cause based on~~ in paragraphs (a) to  
 23.10 (i), except as follows:

23.11 (1) where a parent evidences a desire for anonymity, the child-placing agency and the  
 23.12 court shall give weight to the parent's desire for anonymity in applying the preferences. A  
 23.13 parent's desire for anonymity does not excuse the application of sections 260.751 to 260.835;  
 23.14 or

23.15 (2) where the court determines there is good cause based on:

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

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

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

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

23.29 ~~(e)~~ (k) Testimony of the child's bonding or attachment to a foster family alone, without  
 23.30 the existence of at least one of the factors in paragraph ~~(b)~~ (j), clause (2), shall not be  
 23.31 considered good cause to keep an Indian child in a lower preference or nonpreference  
 23.32 placement. Ease of visitation and facilitation of relationship with the Indian child's parents,  
 23.33 Indian custodian, extended family, or Tribe may be considered when determining placement.

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

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

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

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

24.12 Subd. 8. **Guardian ad litem for Indian children.** Guardian ad litem shall be  
 24.13 specifically trained in the provision of services to Indian children, parent or parents, and  
 24.14 Indian custodians under relevant federal and state laws and rules of court pursuant to section  
 24.15 480.35, subdivision 2, clause (3).

24.16 Sec. 28. **[260.774] IMPROPER REMOVAL OF CHILD, DECLINATION OF**  
 24.17 **JURISDICTION, INVALIDATION, RETURN OF CUSTODY.**

24.18 Subdivision 1. **Improper removal.** In any proceeding where custody of the Indian child  
 24.19 was improperly removed from the parent or parents or where the petitioner has improperly  
 24.20 retained custody after a visit or other temporary relinquishment of custody, the court shall  
 24.21 decline jurisdiction over the petition and shall immediately return the Indian child to the  
 24.22 Indian child's parent or parents or Indian custodian unless returning the Indian child to the  
 24.23 Indian child's parent or parents or Indian custodian would subject the Indian child to a  
 24.24 substantial and immediate danger or threat of such danger.

24.25 Subd. 2. **Invalidation.** (a) Any order for out-of-home placement, transfer of custody,  
 24.26 termination of parental rights, or other permanent change in custody of an Indian child shall  
 24.27 be invalidated upon a showing, by a preponderance of the evidence, that a violation of any  
 24.28 one of the provisions in section 260.761, 260.7611, 260.762, 260.765, or 260.771 has  
 24.29 occurred.

24.30 (b) The Indian child, the Indian child's parent or parents, guardian, Indian custodian, or  
 24.31 Indian Tribe may file a petition to invalidate under this subdivision.

24.32 (c) Upon a finding that a violation of one of the provisions in section 260.761, 260.7611,  
 24.33 260.762, 260.765, or 260.771 has occurred, the court shall:



25.1 (1) dismiss the petition without prejudice; and

25.2 (2) return the Indian child to the care, custody, and control of the parent or parents or  
 25.3 Indian custodian, unless the Indian child would be subjected to imminent damage or harm.

25.4 **Subd. 3. Return of custody following adoption.** (a) Whenever a final decree of adoption  
 25.5 of an Indian child has been vacated, set aside, or there is a termination of the parental rights  
 25.6 of the adoptive parents to the child, a biological parent or prior Indian custodian may petition  
 25.7 for return of custody and the court shall grant the petition unless there is a showing, in  
 25.8 proceedings subject to the provision of sections 260.751 to 260.835, that the return of custody  
 25.9 is not in the best interests of the Indian child.

25.10 (b) The county attorney, Indian child, Indian child's Tribe, or a parent whose parental  
 25.11 rights were terminated under a previous order of the court may file a petition for the return  
 25.12 of custody.

25.13 (c) A petition for return of custody may be filed in court when:

25.14 (1) the parent has corrected the conditions that led to an order terminating parental rights;

25.15 (2) the parent is willing and has the capability to provide day-to-day care and maintain  
 25.16 the health, safety, and welfare of the Indian child; and

25.17 (3) the adoption has been vacated, set aside, or termination of the parental rights of the  
 25.18 adoptive parents to the Indian child has occurred.

25.19 (d) A petition for reestablishment of the legal parent and child relationship for a child  
 25.20 who has not been adopted must meet the requirements in section 260C.329.

25.21 **Sec. 29. [260.7745] COUNTY AND TRIBAL AGREEMENTS; MALTREATMENT**  
 25.22 **ASSESSMENTS AND INVESTIGATIONS OF INDIAN CHILDREN.**

25.23 A Tribe and a county may enter a written agreement transferring responsibility for the  
 25.24 screening and initial response to a child maltreatment report regarding an Indian child  
 25.25 residing in the county where the child's reservation is located, from the county to the Tribe.  
 25.26 An agreement under this section shall include a provision clarifying whether the county or  
 25.27 the Tribe is responsible for ongoing case management stemming from a child maltreatment  
 25.28 report.

26.1 Sec. 30. Minnesota Statutes 2022, section 260.781, is amended to read:

26.2 **260.781 RECORDS; INFORMATION AVAILABILITY.**

26.3 Subdivision 1. **Court decree information.** (a) A state court entering a final decree or  
26.4 order in an Indian child adoptive placement shall provide the Department of Human Services  
26.5 and the child's Tribal social services agency with a copy of the decree or order together with  
26.6 such other information to show:

26.7 (1) the name and Tribal affiliation of the child;

26.8 (2) the names and addresses of the biological parents;

26.9 (3) the names and addresses of the adoptive parents; and

26.10 (4) the identity of any agency having files or information relating to the adoptive  
26.11 placement.

26.12 If the court records contain an affidavit of the biological or adoptive parent or parents  
26.13 requesting anonymity, the court shall delete the name and address of the biological or  
26.14 adoptive parents from the information sent to the child's Tribal social services agency. The  
26.15 court shall include the affidavit with the other information provided to the Minnesota  
26.16 Department of Human Services and the Secretary of the Interior. The Minnesota Department  
26.17 of Human Services and the Secretary of the Interior shall ensure that the confidentiality of  
26.18 the information is maintained and the information shall not be subject to the Freedom of  
26.19 Information Act, United States Code, title 5, section 552, as amended.

26.20 (b) For:

26.21 (1) disclosure of information for enrollment of an Indian child in the Tribe;

26.22 (2) determination of member rights or benefits; or

26.23 (3) certification of entitlement to membership upon the request of the adopted Indian  
26.24 child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian  
26.25 Tribe,

26.26 the Secretary of the Interior shall disclose any other necessary information for the  
26.27 membership of an Indian child in the Tribe in which the Indian child may be eligible for  
26.28 membership or for determining any rights or benefits associated with that membership.

26.29 Where the documents relating to the Indian child contain an affidavit from the biological  
26.30 parent or parents requesting anonymity, the Secretary of the Interior shall certify to the  
26.31 Indian child's Tribe, where the information warrants, that the Indian child's parentage and

27.1 other circumstances of birth entitle the Indian child to membership under the criteria  
 27.2 established by the Tribe.

27.3 Subd. 2. **Disclosure of records.** Upon the request of an adopted Indian person over the  
 27.4 age of 18, the adoptive or foster parents of an Indian person, or an Indian Tribal social  
 27.5 services agency, the Department of Human Services shall disclose to the Indian person's  
 27.6 Tribe information necessary for membership of an Indian person in the Tribe in which the  
 27.7 person may be eligible for membership or for determining any rights or benefits associated  
 27.8 with that membership. When the documents relating to the person contain an affidavit from  
 27.9 the biological or adoptive parent or parents requesting anonymity, the department must use  
 27.10 the procedures described in ~~United States Code, title 25, section 1951, paragraph (b)~~  
 27.11 subdivision 1.

27.12 Subd. 3. **Tribal affiliation information.** Upon application by an Indian individual who  
 27.13 has reached the age of eighteen and who was the subject of an adoptive placement, the court  
 27.14 that entered the final decree shall inform the individual of the Tribal affiliation, if any, of  
 27.15 the individual's biological parents and provide any other necessary information to protect  
 27.16 any rights flowing from the individual's Tribal relationship.

27.17 Sec. 31. Minnesota Statutes 2022, section 260.785, subdivision 2, is amended to read:

27.18 Subd. 2. **Special focus grants.** The commissioner shall establish direct grants to ~~local~~  
 27.19 ~~social services~~ child-placing agencies, Tribes, Indian organizations, and other organizations  
 27.20 for placement prevention and family reunification services for Indian children.

27.21 Sec. 32. Minnesota Statutes 2022, section 260.791, is amended to read:

27.22 **260.791 GRANT APPLICATIONS.**

27.23 A Tribe, Indian organization, or Tribal social services agency program located  
 27.24 off-reservation may apply for primary support grants under section 260.785, subdivision 1.  
 27.25 A ~~local social services~~ child-placing agency, Tribe, Indian organization, or other social  
 27.26 service organization may apply for special focus grants under section 260.785, subdivision  
 27.27 2. Civil legal service organizations eligible for grants under section 260.785, subdivision  
 27.28 3, may apply for grants under that section. Application may be made alone or in combination  
 27.29 with other Tribes or Indian organizations.

27.30 Sec. 33. Minnesota Statutes 2022, section 260.795, subdivision 1, is amended to read:

27.31 Subdivision 1. **Types of services.** (a) Eligible Indian child welfare services provided  
 27.32 under primary support grants include:

- 28.1 (1) placement prevention and reunification services;
- 28.2 (2) family-based services;
- 28.3 (3) individual and family counseling;
- 28.4 (4) access to professional individual, group, and family counseling;
- 28.5 (5) crisis intervention and crisis counseling;
- 28.6 (6) development of foster and adoptive placement resources, including recruitment,
- 28.7 licensing, and support;
- 28.8 (7) court advocacy;
- 28.9 (8) training and consultation to county and private social services agencies regarding
- 28.10 the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act;
- 28.11 (9) advocacy in working with the county and private social services agencies, and
- 28.12 activities to help provide access to agency services, including but not limited to 24-hour
- 28.13 caretaker and homemaker services, day care, emergency shelter care up to 30 days in 12
- 28.14 months, access to emergency financial assistance, and arrangements to provide temporary
- 28.15 respite care to a family for up to 72 hours consecutively or 30 days in 12 months;
- 28.16 (10) transportation services to the child and parents to prevent placement or reunite the
- 28.17 family; and
- 28.18 (11) other activities and services approved by the commissioner that further the goals
- 28.19 of the Indian Child Welfare Act and the Indian Family Preservation Act, including but not
- 28.20 limited to recruitment of Indian staff for ~~local social services~~ child-placing agencies and
- 28.21 licensed child-placing agencies. The commissioner may specify the priority of an activity
- 28.22 and service based on its success in furthering these goals.
- 28.23 (b) Eligible services provided under special focus grants include:
- 28.24 (1) permanency planning activities that meet the special needs of Indian families;
- 28.25 (2) teenage pregnancy;
- 28.26 (3) independent living skills;
- 28.27 (4) family and community involvement strategies to combat child abuse and chronic
- 28.28 neglect of children;
- 28.29 (5) coordinated child welfare and mental health services to Indian families;

29.1 (6) innovative approaches to assist Indian youth to establish better self-image, decrease  
29.2 isolation, and decrease the suicide rate;

29.3 (7) expanding or improving services by packaging and disseminating information on  
29.4 successful approaches or by implementing models in Indian communities relating to the  
29.5 development or enhancement of social structures that increase family self-reliance and links  
29.6 with existing community resources;

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

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

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

29.18 Sec. 34. Minnesota Statutes 2022, section 260.805, is amended to read:

29.19 **260.805 CONTINUED LEGAL RESPONSIBILITY OF ~~LOCAL SOCIAL~~**  
29.20 **~~SERVICES~~ CHILD-PLACING AGENCIES.**

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

29.24 Sec. 35. Minnesota Statutes 2022, section 260.821, subdivision 2, is amended to read:

29.25 Subd. 2. **Special focus grants.** The amount available for grants established under section  
29.26 260.785, subdivision 2, for ~~local social services~~ child-placing agencies, Tribes, Indian  
29.27 organizations, and other social services organizations is one-fifth of the total annual  
29.28 appropriation for Indian child welfare grants. The maximum award under this subdivision  
29.29 is \$100,000 a year for programs approved by the commissioner.

30.1 Sec. 36. Minnesota Statutes 2022, section 260.835, subdivision 2, is amended to read:

30.2 Subd. 2. **Expiration.** ~~The American Indian Child Welfare Advisory Council expires~~  
 30.3 ~~June 30, 2023.~~ This section does not expire.

30.4 Sec. 37. **[260.836] SEVERABILITY.**

30.5 If any provision in sections 260.751 to 260.835 is held invalid or contrary to the  
 30.6 Constitution of the United States or the Minnesota Constitution or the applicability thereof  
 30.7 to any government, agency, person, or circumstance is held invalid, the validity of the  
 30.8 remainder of the provisions in sections 260.751 to 260.835 and the applicability thereof to  
 30.9 any government, agency, person or circumstance shall not be affected thereby.

30.10 Sec. 38. **REVISOR INSTRUCTION.**

30.11 (a) The revisor shall renumber each section of Minnesota Statutes in Column A with  
 30.12 the number in Column B.

30.13	<u>Column A</u>	<u>Column B</u>
30.14	<u>260.7611</u>	<u>260.7745</u>
30.15	<u>260.765, subdivision 5</u>	<u>260.765, subdivision 1a</u>
30.16	<u>260.771, subdivision 1</u>	<u>260.763, subdivision 1</u>
30.17	<u>260.771, subdivision 4, paragraph (a)</u>	<u>260.763, subdivision 2</u>
30.18	<u>260.771, subdivision 4, paragraph (b)</u>	<u>260.763, subdivision 2d</u>
30.19	<u>260.771, subdivision 5</u>	<u>260.763, subdivision 3</u>
30.20	<u>260.771, subdivision 3</u>	<u>260.763, subdivision 4</u>
30.21	<u>260.771, subdivision 3a</u>	<u>260.763, subdivision 5</u>
30.22	<u>260.771, subdivision 7</u>	<u>260.773</u>

30.23 (b) Section 260.763 shall be titled "JURISDICTION AND TRANSFER TO TRIBAL  
 30.24 COURT."

30.25 (c) Section 260.773 shall be titled "PLACEMENT OF INDIAN CHILDREN." The  
 30.26 revisor shall renumber the paragraphs in 260.771, subdivision 7, into subdivisions under  
 30.27 section 260.773.

30.28 (d) The revisor shall make necessary cross-reference changes consistent with the  
 30.29 renumbering in this section.

30.30 Sec. 39. **REPEALER.**

30.31 Minnesota Statutes 2022, section 260.755, subdivision 17, is repealed.

APPENDIX  
Repealed Minnesota Statutes: 23-02562

**260.755 DEFINITIONS.**

Subd. 17. **Private child-placing agency.** "Private child-placing agency" means a private organization, association, or corporation providing assistance to children and parents in their own homes and placing children in foster care or for adoption.