

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

Section 1. Minnesota Statutes 1984, section 611A.04, subdivision 3, is amended to read:

Subd. 3. **EFFECT OF ORDER FOR RESTITUTION.** An order of restitution may be enforced by any person named in the order to receive the restitution in the same manner as a judgment in a civil action. An order of restitution shall be docketed as a civil judgment by the clerk of the district court in the county in which the order of restitution was entered. A decision for or against restitution in any criminal or juvenile proceeding is not a bar to any civil action by the victim or by the state pursuant to section 611A.61 against the offender. The offender shall be given credit, in any order for judgment in favor of a victim in a civil action, for any restitution paid to the victim for the same injuries for which the judgment is awarded.

Sec. 2. **[611A.045] PROCEDURE FOR ISSUING ORDER OF RESTITUTION.**

Subdivision 1. CRITERIA. The court, in determining whether to order restitution and the amount of the restitution, shall consider the amount of the economic loss sustained by the victim as a result of the offense.

Subd. 2. **PRESENTENCE INVESTIGATION.** The court may order that the presentence investigation report made pursuant to section 609.115, subdivision 1, contain information pertaining to the factors set forth in subdivision 1.

Subd. 3. **DISPUTE; EVIDENTIARY BURDEN.** A dispute as to the proper amount or type of restitution must be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.

Approved May 10, 1985

CHAPTER 111 — H.F.No. 782

An act relating to human services; providing for participation by Indian tribes in the placement of their children; proposing coding for new law in Minnesota Statutes, chapter 257.

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

Section 1. **[257.35] CITATION.**

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sections 1 to 8 may be cited as the "Minnesota Indian family preservation act."

Sec. 2. [257.351] DEFINITIONS.

Subdivision 1. SCOPE. As used in sections 1 to 8, the following terms have the meanings given them.

Subd. 2. ADMINISTRATIVE REVIEW. "Administrative review" means review under Minnesota Statutes, section 257.071.

Subd. 3. CHILD PLACEMENT PROCEEDING. "Child placement proceeding" includes a judicial proceeding which could result in the following:

(a) "Adoptive placement" means the permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption.

(b) "Involuntary foster care placement" means an action removing an Indian child from his or her parents or Indian custodian for temporary placement in a foster home, institution, or the home of a guardian. The parent or Indian custodian cannot have the child returned upon demand, but parental rights have not been terminated.

(c) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, before or instead of adoptive placement.

(d) "Termination of parental rights" means an action resulting in the termination of the parent-child relationship under Minnesota Statutes, section 260.221.

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

Subd. 4. DEMAND. "Demand" means a written and notarized statement signed by a parent or Indian custodian of a child which requests the return of the child who has been voluntarily placed in foster care.

Subd. 5. INDIAN. "Indian" means a person who is a member of an Indian tribe or an Alaskan native and a member of a regional corporation as defined in section 7 of the Alaska Native Claims Settlement Act, United States Code, title 43, section 1606.

Subd. 6. INDIAN CHILD. "Indian child" means an unmarried person who is under age 18 and is:

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

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Subd. 7. INDIAN CHILD'S TRIBE. "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian child's tribe is the tribe with which the Indian child has the most significant contacts. If that tribe does not express an interest in the outcome of the actions taken under sections 1 to 8 with respect to the child, any other tribe in which the child is eligible for membership that expresses an interest in the outcome may act as the Indian child's tribe.

Subd. 8. INDIAN CUSTODIAN. "Indian custodian" means an Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody, and control has been transferred by the parent of the child.

Subd. 9. INDIAN TRIBE. "Indian tribe" means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any band under the Alaska Native Claims Settlement Act, United States Code, title 43, section 1602, and exercising tribal governmental powers.

Subd. 10. LOCAL SOCIAL SERVICE AGENCY. "Local social service agency" means the local agency under the authority of the county welfare or human services board or county board of commissioners which is responsible for human services.

Subd. 11. PARENT. "Parent" means the biological parent of an Indian child, or any Indian person who has lawfully adopted an Indian child, including a person who has adopted a child by tribal law or custom. It does not include an unmarried father whose paternity has not been acknowledged or established.

Subd. 12. PRIVATE CHILD PLACING AGENCY. "Private child placing agency" means a private organization, association, or corporation providing assistance to children and parents in their own homes and placing children in foster care or for adoption.

Subd. 13. RESERVATION. "Reservation" means Indian country as defined in United States Code, title 18, section 1151 and any lands which are either held by the United States in trust for the benefit of an Indian tribe or individual, or held by an Indian tribe or individual subject to a restriction by the United States against alienation.

Subd. 14. SECRETARY. "Secretary" means the secretary of the United States department of the interior.

Subd. 15. TRIBAL COURT. "Tribal court" means a court with jurisdiction over child custody proceedings which is either a court of Indian offenses, or a court established and operated under the code or custom of an Indian tribe,

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or the administrative body of a tribe which is vested with authority over child custody proceedings.

Subd. 16. TRIBAL SOCIAL SERVICE AGENCY. "Tribal social service agency" means the unit under authority of the governing body of the Indian tribe which is responsible for human services.

Subd. 17. VOLUNTARY FOSTER CARE PLACEMENT. "Voluntary foster care placement" means a decision in which there has been participation by a local social service agency or private child placing agency resulting in the temporary placement of an Indian child away from the home of his or her parents or Indian custodian in a foster home, institution, or the home of a guardian, and the parent or Indian custodian may have the child returned upon demand.

Sec. 3. [257.352] SOCIAL SERVICE AGENCY AND PRIVATE LICENSED CHILD PLACING AGENCY NOTICE TO TRIBES.

Subdivision 1. DETERMINATION OF INDIAN CHILD'S TRIBE. The local social service agency or private licensed child placing agency shall determine whether a child brought to its attention for the purposes described in this section is an Indian child and the identity of the Indian child's tribe.

Subd. 2. AGENCY NOTICE OF POTENTIAL OUT-OF-HOME PLACEMENT. When a local social service agency or private child placing agency determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and requires the continued involvement of the agency with the child for a period in excess of 30 days, the agency shall send notice of the condition and of the initial steps taken to remedy it to the Indian child's tribal social service agency within seven days of the determination. At this and any subsequent stage of its involvement with an Indian child, the agency shall, upon request, give the tribal social service agency full cooperation including access to all files concerning the child. If the files contain confidential or private data, the agency may require execution of an agreement with the tribal social service agency that the tribal social service agency shall maintain the data according to statutory provisions applicable to the data.

Subd. 3. PRIVATE CHILD PLACING AGENCY NOTICE OF POTENTIAL PREADOPTIVE OR ADOPTIVE PLACEMENT. When a private child placing agency determines that an Indian child is in a dependent or other condition that could lead to a preadoptive or adoptive placement, the agency shall send notice of the condition to the Indian child's tribal social service agency within seven days of the determination. The agency shall include in the notice the identity of the birthparents and child absent written objection by the birthparents. The private child placing agency shall inform the birthparents of the Indian child of any services available to the Indian child through the child's tribal social service agency, including child placement services, and shall addition-

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ally provide the birthparents of the Indian child with all information sent from the tribal social service agency in response to the notice.

Subd. 4. IDENTIFICATION OF EXTENDED FAMILY MEMBERS.
Any agency considering placement of an Indian child shall make reasonable efforts to identify and locate extended family members.

Sec. 4. [257.353] VOLUNTARY FOSTER CARE PLACEMENT.

Subdivision 1. DETERMINATION OF INDIAN CHILD'S TRIBE.
The local social service agency or private licensed child placing agency shall determine whether a child brought to its attention for the purposes described in this section is an Indian child and the identity of the Indian child's tribe.

Subd. 2. NOTICE. When an Indian child is voluntarily placed in foster care, the local social service agency involved in the decision to place the child shall give notice of the placement to the child's parents, tribal social service agency, and the Indian custodian within seven days of placement, excluding weekends and holidays.

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

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

Subd. 3. NOTICE OF ADMINISTRATIVE REVIEW. In an administrative review of a voluntary foster care placement, the tribal social service agency of the child, the Indian custodian, and the parents of the child shall have notice and a right of participation in the review.

Subd. 4. RETURN OF CHILD IN VOLUNTARY PLACEMENT.
Upon demand by the parent or Indian custodian of an Indian child, the local social service agency or private licensed child placing agency shall return the child in voluntary foster care placement to the parent or Indian custodian within 24 hours of the receipt of the demand. If the request for return does not satisfy the requirement of section 2, subdivision 4, the local social service agency or private child placing agency shall immediately inform the parent or Indian custodian of the Indian child of the requirement.

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Subd. 5. IDENTIFICATION OF EXTENDED FAMILY MEMBERS. Any agency considering placement of an Indian child shall make reasonable efforts to identify and locate extended family members.

Sec. 5. [257.354] CHILD PLACEMENT PROCEEDINGS.

Subdivision 1. INDIAN TRIBE JURISDICTION. An Indian tribe with a tribal court has exclusive jurisdiction over a child placement proceeding involving an Indian child who resides within the reservation of such tribe at the commencement of the proceedings. When an Indian child is in the legal custody of a person or agency pursuant to an order of a tribal court, the Indian tribe retains exclusive jurisdiction, notwithstanding the residence or domicile of the child.

Subd. 2. COURT DETERMINATION OF TRIBAL AFFILIATION OF CHILD. In any child placement proceeding, the court shall establish whether an Indian child is involved and the identity of the Indian child's tribe.

Subd. 3. TRANSFER OF PROCEEDINGS. In a proceeding for the termination of parental rights or involuntary foster care placement of an Indian child not within the jurisdiction of subdivision 1, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the jurisdiction of the tribe absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe. The transfer shall be subject to declination by the tribal court of such tribe.

Subd. 4. EFFECT OF TRIBAL COURT PLACEMENT ORDERS. To the extent that any child subject to sections 1 to 8 is otherwise eligible for social services, orders of a tribal court concerning placement of such child shall have the same force and effect as orders of a court of this state. In any case where the tribal court orders placement through a local social service agency, the court shall provide to the local agency notice and an opportunity to be heard regarding the placement. Financial responsibility for the placement shall be determined by the local social service agency and shall be subject to review by the commissioner in accordance with sections 14.01 to 14.69.

Sec. 6. [257.355] PLACEMENT RECORDS.

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

Sec. 7. [257.356] RECORDS; INFORMATION AVAILABILITY.

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Subdivision 1. COURT DECREE INFORMATION. A state court entering a final decree or order in an Indian child adoptive placement shall provide the department of human services and the child's tribal social service agency with a copy of the decree or order together with such other information to show:

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

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

Subd. 2. DISCLOSURE OF RECORDS. Upon the request of an adopted Indian person over the age of 18, the adoptive or foster parents of an Indian person, or an Indian tribal social service agency, the department of human services shall disclose to the Indian person's tribe information necessary for membership of an Indian person in the tribe in which the person may be eligible for membership or for determining any rights or benefits associated with that membership. When the documents relating to the person contain an affidavit from the biological or adoptive parent or parents requesting anonymity, the department must use the procedures described in United States Code, title 25, section 1951, paragraph (b).

Sec. 8. [257.357] **RULE CHANGE.**

The commissioner of human services shall amend Minnesota Rules, parts 9545.0210 and 9545.0790, to provide that an agency that places Indian children shall cooperate with the Indian child's tribe in securing placement that is consistent with the child's racial or ethnic heritage, as indicated by the policy statements in Minnesota Statutes, sections 259.255, and 259.28, subdivision 2. The amendment is not subject to the rulemaking provisions of chapter 14, but the commissioner must comply with section 14.38, subdivision 7, in adopting the amendment.

Approved May 10, 1985

CHAPTER 112 — H.F.No. 882

An act relating to natural resources; authorizing the commissioner to enter into agreements with other states for forest fire prevention and suppression purposes; amending Minnesota Statutes 1984, section 574.26; proposing coding for new law in Minnesota Statutes, chapters 88 and 574.

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