

MINNESOTA STATUTES CHAPTER 260.751
MINNESOTA INDIAN FAMILY PRESERVATION ACT

Minnesota Statute §260.751 Citation

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

HIST: 1999 c 139 art 1 s 2

Minnesota Statute §260.755 Definitions

Subdivision 1. Scope. As used in sections 260.751 to 260.835, the following terms have the meanings given them.

Subd. 2. Administrative review. "Administrative review" means review under section 260C.212.

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

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

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

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

(d) "Termination of parental rights" means an action resulting in the termination of the parent-child relationship under section 260C.301.

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

Subd. 4. Commissioner. "Commissioner" means the commissioner of human services.

Subd. 5. Demand. "Demand" means a written and notarized statement signed by a parent or Indian custodian of a child which requests the return of the child who has been voluntarily placed in foster care.

Subd. 6. Family-based services. "Family-based services" means intensive family-centered services to families primarily in their own home and for a limited time.

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

Subd. 8. Indian child. "Indian child" means an unmarried person who is under age 18 and is:

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

Subd. 9. Indian child's tribe. "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian child's tribe is the tribe with which the Indian child has the most significant contacts. If that tribe does not express an interest in the outcome of the actions taken under sections 260.751 to 260.835 with respect to the child, any other tribe in which the child is eligible for membership that expresses an interest in the outcome may act as the Indian child's tribe.

Subd. 10. Indian custodian. "Indian custodian" means an Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody, and control has been transferred by the parent of the child.

Subd. 11. Indian organization. "Indian organization" means an organization providing child welfare services that is legally incorporated as a nonprofit organization, is registered with the secretary of state, and is governed by a board of directors having at least a majority of Indian directors.

Subd. 12. Indian tribe. "Indian tribe" means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any band under the Alaska Native Claims Settlement Act, United States Code, title 43, section 1602, and exercising tribal governmental powers.

Subd. 13. Local social services agency. "Local social services agency" means the local agency under the authority of the county welfare or human services board or county board of commissioners which is responsible for human services.

Subd. 14. Parent. "Parent" means the biological parent of an Indian child, or any Indian person who has lawfully adopted an Indian child, including a person who has adopted a child by tribal law or custom. It does not include an unmarried father whose paternity has not been acknowledged or established.

Subd. 15. Permanency planning. "Permanency planning" means the systematic process of carrying out, within a short time, a set of goal-oriented activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers, and the opportunity to establish lifetime relationships.

Subd. 16. Placement prevention and family reunification services. "Placement prevention and family reunification services" means services designed to help children remain with their families or to reunite children with their parents.

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

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

Subd. 19. Secretary. "Secretary" means the secretary of the United States Department of the Interior.

Subd. 20. Tribal court. "Tribal court" means a court with federally recognized 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, or the administrative body of a tribe which is vested with authority over child custody proceedings. Except as provided in section 260.771, subdivision 5, nothing in this chapter shall be construed as conferring jurisdiction on an Indian tribe.

Subd. 21. Tribal social services agency. "Tribal social services agency" means the unit under authority of the governing body of the Indian tribe which is responsible for human services.

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

Minnesota Statute §260.761 Social services agency and private licensed child-placing agency notice to tribes

Subdivision 1. Determination of Indian child's tribe.

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

Subd. 2. Agency notice of potential out-of-home placement. When a local social services 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 services 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 services agency full cooperation including access to all files concerning the child. If the files contain confidential or private data, the agency may require execution of an agreement with the tribal social services agency that the tribal social services agency shall maintain the data according to statutory provisions applicable to the data. This subdivision applies whenever the court transfers legal custody of an Indian child under section 260B.198, subdivision 1, paragraph (c), clause (1), (2), or (3), following an adjudication for a misdemeanor-level delinquent act.

Subd. 3. Notice of potential preadoptive or adoptive placement. In any voluntary adoptive or preadoptive placement proceeding in which a local social services agency, private child-placing agency, petitioner in the adoption, or any other party has reason to believe that a child who is the subject of an adoptive or preadoptive placement proceeding is or may be an "Indian child," as defined in section 260.755, subdivision 8, and United States Code, title 25, section 1903(4), the agency or person shall notify the Indian child's tribal social services agency by registered mail with return receipt requested of the pending proceeding and of the right of intervention under subdivision 6. If the identity or location of the child's tribe cannot be determined, the notice must be given to the United States secretary of interior in like manner, who will have 15 days after receipt of the notice to provide the requisite notice to the tribe. No preadoptive or adoptive placement proceeding may be held until at least ten days after receipt of the notice by the tribe or secretary. Upon request, the tribe must be granted up to 20 additional days to prepare for the proceeding. The agency or notifying party shall include in the notice the identity of the birth parents and child absent written objection by the birth parents. The private child-placing agency shall inform the birth parents of the Indian child of any services available to the Indian child through the child's tribal social

services agency, including child placement services, and shall additionally provide the birth parents of the Indian child with all information sent from the tribal social services agency in response to the notice.

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

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

Subd. 6. Indian tribe's right of intervention. In any state court proceeding for the voluntary adoptive or preadoptive placement of an Indian child, the Indian child's tribe shall have a right to intervene at any point in the proceeding.

Subd. 7. Identification of extended family members. Any agency considering placement of an Indian child shall make reasonable efforts to identify and locate extended family members.

HIST: 1999 c 139 art 1 s 4

Minnesota Statute §260.765 Voluntary foster care placement

Subdivision 1. Determination of Indian child's tribe.

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

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

If a private licensed child-placing agency makes a temporary voluntary foster care placement pending a decision on adoption by a parent, notice of the placement shall be given to the child's parents, tribal social services agency, and the Indian custodian upon

the filing of a petition for termination of parental rights or three months following the temporary placement, whichever occurs first.

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

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

Subd. 4. Return of child in voluntary placement. Upon demand by the parent or Indian custodian of an Indian child, the local social services agency or private licensed child-placing agency shall return the child in voluntary foster care placement to the parent or Indian custodian within 24 hours of the receipt of the demand. If the request for return does not satisfy the requirement of section 260.755, subdivision 5, the local social services agency or private child-placing agency shall immediately inform the parent or Indian custodian of the Indian child of the requirement.

Subd. 5. Identification of extended family members. Any agency considering placement of an Indian child shall make reasonable efforts to identify and locate extended family members.

HIST: 1999 c 139 art 1 s 5

Minnesota Statute §260.771 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 260.755 to 260.835 is otherwise eligible for social services, orders of a tribal court concerning placement of such child shall have the same force and effect as orders of a court of this state. In any case where the tribal court orders placement through a local social services agency, the court shall provide to the local agency notice and an opportunity to be heard regarding the placement. Determination of county of financial responsibility for the placement shall be determined by the local social services agency in accordance with section 256G.02, subdivision 4. Disputes concerning the county of financial responsibility shall be settled in the manner prescribed in section 256G.09.

Subd. 5. Indian tribe agreements. The commissioner is hereby authorized to enter into agreements with Indian tribes pursuant to United States Code, title 25, section 1919, respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between the state and an Indian tribe.

HIST: 1999 c 139 art 1 s 6

Minnesota Statute §260.775 Placement records

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

HIST: 1999 c 139 art 1 s 7

Minnesota Statute §260.781 Records; information availability

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

(1) the name and tribal affiliation of the child;

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

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

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

HIST: 1999 c 139 art 1 s 8

Minnesota Statute §260.785 Indian child welfare grants

Subdivision 1. Primary support grants. The commissioner shall establish direct grants to Indian tribes, Indian organizations, and tribal social services agency programs located off-reservation that serve Indian children and their families to provide primary support for Indian child welfare programs to implement the Indian Family Preservation Act.

Subd. 2. Special focus grants. The commissioner shall establish direct grants to local social services agencies, tribes, Indian organizations, and other organizations for placement prevention and family reunification services for Indian children.

Subd. 3. Compliance grants. The commissioner shall establish direct grants to an Indian child welfare defense corporation, as defined in section 611.216, subdivision 1a, to promote statewide compliance with the Indian Family Preservation Act and the Indian Child Welfare Act, United States Code, title 25, section 1901, et seq. The commissioner shall give priority consideration to applicants with demonstrated capability of providing legal advocacy services statewide.

Subd. 4. Request for proposals. The commissioner shall request proposals for grants under subdivisions 1, 2, and 3, and specify the information and criteria required.

HIST: 1999 c 139 art 1 s 9

Minnesota Statute §260.791 Grant applications

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

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

Minnesota Statute §260.795 Eligible services

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

- (1) placement prevention and reunification services;
- (2) family-based services;
- (3) individual and family counseling;
- (4) access to professional individual, group, and family counseling;
- (5) crisis intervention and crisis counseling;
- (6) development of foster and adoptive placement resources, including recruitment, licensing, and support;
- (7) court advocacy;
- (8) training and consultation to county and private social services agencies regarding the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act;
- (9) advocacy in working with the county and private social services agencies, and activities to help provide access to agency services, including but not limited to 24-hour caretaker and homemaker services, day care, emergency shelter care up to 30 days in 12 months, access to emergency financial assistance, and arrangements to provide temporary respite care to a family for up to 72 hours consecutively or 30 days in 12 months;
- (10) transportation services to the child and parents to prevent placement or reunite the family; and

(11) other activities and services approved by the commissioner that further the goals of the Indian Child Welfare Act and the Indian Family Preservation Act, including but not limited to recruitment of Indian staff for local social services agencies and licensed child-placing agencies. The commissioner may specify the priority of an activity and service based on its success in furthering these goals.

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

(1) permanency planning activities that meet the special needs of Indian families;

(2) teenage pregnancy;

(3) independent living skills;

(4) family and community involvement strategies to combat child abuse and chronic neglect of children;

(5) coordinated child welfare and mental health services to Indian families;

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

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

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

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

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

Subd. 2. Inappropriate expenditures. Indian child welfare grant money must not be used for:

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

- (2) foster care maintenance or difficulty of care payments;
- (3) residential facility payments;
- (4) adoption assistance payments;
- (5) public assistance payments for Minnesota family investment program assistance, supplemental aid, medical assistance, general assistance, general assistance medical care, or community health services authorized by sections 145A.01 to 145A.14; or
- (6) administrative costs for income maintenance staff.

Subd. 3. Revenue enhancement. The commissioner shall submit claims for federal reimbursement earned through the activities and services supported through Indian child welfare grants. The commissioner may set aside a portion of the federal funds earned under this subdivision to establish and support a new Indian child welfare position in the Department of Human Services to provide program development. The commissioner shall use any federal revenue not set aside to expand services under section 260.785. The federal revenue earned under this subdivision is available for these purposes until the funds are expended.

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

Minnesota Statute §260.805 Continued legal responsibility of local social services agencies

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

HIST: 1999 c 139 art 1 s 12

Minnesota Statute §260.810 Payments; required reports

Subdivision 1. Payments. The commissioner shall make grant payments to each approved program in four quarterly installments a year. The commissioner may certify an advance payment for the first quarter of the state fiscal year. Later payments must be made upon receipt by the state of a quarterly report on finances and program activities.

Subd. 2. Quarterly report. The commissioner shall specify requirements for reports, including quarterly fiscal reports, according to section 256.01, subdivision 2, paragraph (17). Each quarter, an approved program receiving an Indian child welfare grant shall submit a report to the commissioner that includes:

(1) a detailed accounting of grant money expended during the preceding quarter, specifying expenditures by line item and year to date; and

(2) a description of Indian child welfare activities conducted during the preceding quarter, including the number of clients served and the type of services provided.

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

Subd. 3. Final report. A final evaluation report must be submitted by each approved program. It must include client outcomes, cost and effectiveness in meeting the goals of the Indian Family Preservation Act and permanency planning goals.

HIST: 1999 c 139 art 1 s 13

Minnesota Statute §260.815 Monitoring and evaluation

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

HIST: 1999 c 139 art 1 s 14

Minnesota Statute §260.821 Grant formula

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

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

(c) The commissioner shall award Indian organizations and tribal social services agency programs located off-reservation that serve Indian children and families up to 30 percent of the amount set in paragraph (a) for primary support grants. A maximum of four multiservice Indian organizations and tribal social services agency programs located off-reservation may be awarded grants under this paragraph. "Multiservice Indian

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

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

HIST: 1999 c 139 art 1 s 15

Minnesota Statute §260.831 Undistributed funds

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

HIST: 1999 c 139 art 1 s 16

Minnesota Statute §260.835 American Indian Child Welfare Advisory Council

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