

MN Department of Human Services
Social Services Manual
American Indian Children XIII-3500

Based on statutes and rules in effect as of 06/18/99

XIII American Indian Children

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Introduction**XIII-3510****History****XIII-3511**

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

Public Law 95-608, the federal Indian Child Welfare Act of 1978 (ICWA) (codified at 25 USC 1901 et. seq.) was passed to remedy this problem of disproportionately large numbers of Indian children

being placed in foster care. The law recognized “that there is no resource . . . more vital to the continued existence and integrity of Indian tribes than their children” and that there has been a failure by non-Indian agencies “to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.” **25 USC 1901** In passing the Indian Child Welfare Act, Congress stated: It is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operations of child and family service programs. **25 USC 1902**

Minnesota adopted the above concepts as state policy and passed the Minnesota Indian Family Preservation Act (MIFPA) (Minn. Stat. 257.35-257.3579) in 1985 to strengthen and expand parts of the federal Act. The Minnesota law and its amendments emphasize the State's interest in supporting the preservation of the cultural heritage of Indian children and recognize tribes as powerful resources in doing so.

As authorized by 25 USC 1919 and Minn. Stat. 257.354, subd. 5, the Minnesota Tribal/State Agreement was developed to provide policies and procedures for maximizing the participation of tribes in decisions regarding Indian children, addressing barriers to implementing those services for the protection of Indian families and children and preventing foster placements and non-Indian adoptions. The Agreement is directed at child welfare activities of the state through its local social services systems and attempts to impact the state's judicial systems. It represents the development of a comprehensive working relationship between all 11 Minnesota tribes and the Minnesota Department of Human Services for the delivery of child welfare services.

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

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

1. Pub. Law 83-280 (Civil and Criminal Jurisdiction on Reservations).
2. Pub. Law 95-608 (Indian Child Welfare Act of 1978).
3. Pub. Law 96-272 (Foster Care and Adoption Assistance Act of 1980).
4. Minn. Stat. 257.35 to 257.3579 (1997) (Minnesota Indian Family Preservation Act).
5. Tribal/State Agreement

Scope**XIII-3513**

This manual applies to both Local Social Service Agencies (LSSAs) and to private child placing agencies..

Summary of the Indian Child Welfare Act**XIII-3514**

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

ICWA accomplishes this goal by:

1. requiring that active efforts are made to identify a child's membership or eligibility for membership in any Indian tribe;
2. recognizing the jurisdiction of tribal courts;
3. providing for the dismissal or mandatory transfer of cases where the tribe has exclusive jurisdiction;
4. providing for transfer of jurisdiction over Indian child welfare cases to tribal court upon request in all other cases barring good cause to the contrary as defined under the ICWA;
5. requiring that states give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings;
6. requiring state courts, in the placement of Indian children and in the termination of parental rights of Indian children, to observe the highest standards applicable to prevent the destruction of Indian families. These standards apply to:
 - a. the level of effort required to prevent placement;
 - b. the level of effort required to reunify children with families;
 - c. the level of evidence required in judicial proceedings;
 - d. the requirement for a qualified expert witness under the ICWA;
7. requiring compliance with the order of preference of Indian children as set forth in the ICWA, unless the tribe has adopted a different order of preference

8. requiring that the prevailing social and cultural standards of the local Indian community be applied in placement decisions;
9. requiring notice to tribe(s), Indian parent(s), and Indian custodian(s) of state court child custody proceedings;
10. providing for the right of parent(s), Indian custodian(s), and/or tribe(s) of an Indian child to intervene in the state court proceedings;
11. providing for court appointed counsel to represent indigent parent(s), or Indian custodian(s) of an Indian child;
12. providing protections for the parent(s) who voluntarily place their child in foster care or terminate parental rights;
13. requiring tribal and parental access, in accordance with applicable law, to records maintained by the state;
14. recognizing tribal licensing and/or approval of standards for foster homes;
15. funding of tribal social services to Indian families and their children;
16. providing for a process to invalidate the state court's action when ICWA has been violated; and
17. assisting Indian adults who were adopted as children to establish tribal affiliation;

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

Summary of the Minnesota Indian Family Preservation Act

XIII-3515

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

1. requiring notification and providing for intervention by tribal social services when an Indian child is at risk of placement;
2. establishing greater emphasis of identification of an Indian child's tribe(s) and extended family members for placement purposes;
3. requiring the provision of prevention services that address the conditions in a child's home which could lead to placement;
4. requiring notice and providing for intervention by the tribe(s) in case of voluntary placement;
5. providing for tribal notice of and the right to participate in administrative reviews of voluntary foster placements;
6. establishing time limits for the local social services agencies to return an Indian child to its parent(s) or Indian custodian(s) upon receipt of a demand for immediate return;
7. requiring notice to the tribe(s) and access to agency records when the court finds an Indian child has committed a juvenile status offense;

8. re-enforcing that orders of a tribal court have the same force and effects as orders of state court;
9. clarifying that financial responsibility for the cost of placement or social services ordered by a tribal court shall be determined by the local social services agency (LSSA), pursuant to Minn. Stat. 256G.09;
10. providing an opportunity for the LSSA to be heard in tribal court hearings;
11. providing that a copy of a court decree regarding the adoptive placement on an Indian child be provided to the tribe(s);
12. requiring DHS to provide any information to or for an adopted child, adoptive parent(s), Indian custodian(s), or guardian(s), which may be necessary to establish tribal membership;
13. requiring DHS to obtain and maintain records on Indian children in residential facilities, including the extent of compliance with placement preferences of the ICWA; and
14. providing grants to tribe(s) and Indian organizations to serve Indian children and families, and to implement the Minnesota Indian Family Preservation Act.

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

General Indian Child Welfare Provisions	XIII-3520
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Definitions

XIII-3521

1. Acknowledge: Any action on the part of the unwed father to hold himself out as the biological father of an Indian child. “Acknowledged father” also means a father as defined by tribal law or custom.

2. Active Efforts: Active, thorough, careful, and culturally appropriate efforts by the LSSA to fulfill its obligation under ICWA, MIFPA and the DHS Social Services regulations to prevent placement of an Indian child and at the earliest possible time to return the child to the child's family once placement has occurred.

25 USC 1912 (d)

3. Best Interest of the Indian Child: Implementation of the policies and placement preferences set forth in the ICWA. Meeting the best interests of the Indian child requires recognition of the importance of maintaining connections with family, siblings, extended family, the tribe, and the child's cultural heritage, and requires knowledge and understanding of the damage caused by loss of identity for Indian children.

25 USC 1902

4. Case Plan: A written plan outlining the requirements set forth in this Chapter including but not limited to activities of the LSSA to eliminate risk of imminent physical harm to a child,

documentation of the LSSA's active efforts to alleviate crisis and prevent placement, including family activities and responsibilities and plans to reunify the child and family.

5. Child Custody/Placement Proceeding: This term includes foster care placements, terminations of parental rights, preadoptive placements and adoptive placements as follows:

- a. “foster care placement”: any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
- b. “termination of parental rights”: any action resulting in the termination of the parent-child relationship;
- c. “preadoptive placement”: the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
- d. “adoptive placement”: the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

**25 USC 1903(1)(i-iv);
Minn. Stat. 257.351, subd. 3**

Such term or terms do not include a placement based upon an act, which, if committed by an adult would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents. However, as set forth in ICWA, the term or terms do apply to all other domestic relations proceedings in which an Indian child is the subject of a child custody proceeding as defined in ICWA, including but not limited to the transfer of legal custody of an Indian child to a member of the child’s extended family.

6. Data: All records, files, (including microfilm or computer files), case notes, and all other information regarding an Indian child regardless of whether such files containing the information are open or closed.

7. Demand: A written and notarized statement signed by a parent or Indian custodian of a child that requests the return of a child voluntarily placed in foster care.

Minn. Stat. 257.351, subd. 4

8. Designated Tribal Representative: An individual designated in writing by the Indian child's tribe to represent the tribe in child custody proceedings.

9. Domicile: A person’s true, permanent home, or the place to which he/she intends to return even though actually residing elsewhere; a child’s domicile is determined by the domicile of his/her parent(s) even if the child has never resided at the parent(s)’ domicile.

“Domicile” is not necessarily synonymous with “residence”, and one can reside in one place but be domiciled in another. For adults, domicile is established by physical presence

in a place connected with a certain state of mind concerning ones intent to remain there. Since most minors are legally incapable of forming the requisite intent to establish a domicile, their domicile is determined by that of the custodial parent. On occasion a child's domicile will be in a place where the child has never been.

Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989)

10. Emergency: A condition caused by the action or inaction by an Indian child's parent or Indian custodian that puts the child at risk of imminent physical damage or harm. The emergency only exists while there is an immediate risk, and once that passes, the emergency no longer exists.

25 USC 1922

11. Extended Family: Defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (See also Definition No.29 "Relative", 25 USC 1903 (2)).

25 USC 1903

12. Good Cause:

a. Placements: For purposes of foster care, pre-adoptive or adoptive placement, "good cause" means sufficient justification to depart from the placement preferences of 25 USC 1915. In order for a finding of good cause to be made, one or more of the following conditions must be shown to exist by clear and convincing evidence in the record of the custody proceeding:

- (1) The request of the biological parents or the child when the child is of sufficient age;
- (2) The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness; or
- (3) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the placement preference criteria.

Adapted from Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, F.3

Note: Bonding or attachment to a foster family alone, without the existence of any of the foregoing conditions is not good cause to keep an Indian child in a lower preference or non-preference home.

Adoption of M.T.S., 489 N.W.2d 285 (Minn. App. 1992)

b. Transfers of Cases to Tribes. For purposes of determining whether to refer or transfer a proposed or pending Indian child custody proceeding to a tribal court where the Indian child is neither a ward of tribal court nor a resident or a domiciliary of an Indian reservation, "good cause" means sufficient justification for the state court to decline to transfer a proposed custody proceeding to tribal court. Good cause in this context exists if the tribe does not have a tribal court that has been vested with jurisdiction

over the type of custody proceeding at issue, or if there is such a tribal court, it may be found to exist under any of the following circumstances:

- (1) the Indian child is over 12 years of age and objects to the referral or transfer;
- (2) the evidence in the proposed or pending custody proceeding could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses;
- (3) the parents of an Indian child over five years of age are not available, and the child has had little or no contact with the child's tribe(s) or members of such tribe(s);
or
- (4) if the proceeding is already pending before a state court, it has reached an advanced stage when the motion to transfer is received by the court, and the party seeking transfer did not file a motion for transfer promptly after receiving notice of a hearing in the proceeding from the court or the LSSA.

Neither the social-economic conditions of the Indian reservation nor the adequacy of tribal or Bureau of Indian Affairs social services or judicial systems is relevant to the existence of good cause.
Adapted from Fed. Reg. Vol. 44, No. 228, Nov. 26, 1979, C.3.

13. ICWA: The Indian Child Welfare Act.
25 USC 1901-1963

14. ICWA Compliance Review Team: The team that monitors the LSSA and private child placing agency compliance with ICWA and MIFPA. This team consists of the Ombudsman for Indian Families, DHS ICWA Consultant, DHS Data Reporting Representative, ICWA Court Monitor, two representatives from the ICWA Advisory Council, one LSSA representative, and one representative from a private child placing agency.
Tribal/State Agreement, Part II, I

15. ICWA Contact Person: A person(s) designated by a tribe, in writing, to receive formal notice regarding Indian child custody/placement proceedings.

16. Imminent Physical Damage or Harm: A threat of immediate physical injury; emotional harm to a child is not sufficient grounds for emergency removal.

17. Indian: Any person who is a member of an Indian tribe, or an Alaskan Native and a member of a Regional Corporation as defined in the Alaska Native Claims Settlement Act.
43 USC 1602 (g);
25 USC 1903 (3);
Minn. Stat. 257.351, subd. 5

18. Indian Child: Any unmarried person who is under age eighteen (18) and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe.
Minn. Stat. 257.351, subd. 6

A determination by the tribe that a child is a member or eligible for membership in the tribe is conclusive. (This shall not be construed as an amendment of present tribal enrollment policies.)

19. Indian Child's Tribe: The tribe in which an Indian child is a member or eligible for membership. For an Indian child who is a member of or eligible for membership in more than one tribe, it shall be that tribe with which the child has more significant contacts. If that tribe does not express an interest in participating in decisions about the child, then any other tribe in which the child is eligible for membership may intervene on behalf of the child.

A decision by the Indian child's tribe that states the child is a member of said tribe is conclusive. A termination of parental rights does not sever the child's membership or eligibility for membership in the tribe or other rights as an Indian.

25 USC 1903 (5);

Minn. Stat. 257.351, subd. 7

20. Indian Custodian: Any Indian person who has legal custody of an Indian child under tribal law or custom, or under state law or to whom temporary physical care, custody and control has been transferred by the parent of such child.

25 USC 1903 (6);

Minn. Stat. 257.351, subd. 8.

21. Indian Organization: Any group, association, partnership, corporation or other legal entity owned and controlled by Indians, or a majority of whose board members are Indians, and who are recognized by a tribe and surrounding Indian community as a provider of social or child welfare services to Indian families.

25 USC 1903 (7);

Minn. Stat. 257.351, subd. 8a

22. Indian Tribe: Any Indian tribe, band, nation, or other organized group or community of Indians or such group that was previously recognized or that is seeking such recognition and eligible for services provided to Indians by the United States, including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act [43 USC 1602 (c)] as amended.

25 USC 1903 (8);

Minn. Stat. 257.351, subd. 9

23. Legal Custody: The legally enforceable duty, responsibility, and authority to provide care and control of a child as interpreted by the Minnesota juvenile court system or tribal court when transferring legal responsibility for care from a parent, Indian custodian, or legal guardian to the LSSA, court services agency, or individual pursuant to a court order.

24. MIFPA: The Minnesota Indian Family Preservation Act.

Minn. Stat. 257.35 to 257.3579

25. Parent: Any biological parent or parents of an Indian child or an Indian person who has lawfully adopted an Indian child, including but not limited to adoptions under tribal law or custom. This definition does not include the unwed father where paternity has not been

acknowledged or established.

25 USC 1903 (9);

Minn. Stat. 257.351, subd. 11

26. Permanency Planning for Indian Children: 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.

Minn. Stat. 257.351, subd. 11a

27. Proposed Indian Child Custody Proceeding: Any case involving an Indian child in which the LSSA has determined that a child custody proceeding should be initiated in order to protect the best interests of the Indian child.

28. Qualified Expert or Qualified Expert Witness: A person who is:

a. a member of the Indian child's tribe, who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices;

b. a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or

c. a professional person who has substantial education and experience in the area of his/her specialty and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community.

Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, D.4

29. Relative: A member of the child's extended family, and includes the acknowledged but unadjudicated father, the acknowledged or adjudicated father's relatives, all other biological relatives of a child and any Indian non-relative with which the child has a kinship relationship as determined by Tribal law or custom or defined by current state law. For an Indian child, relative means members of the extended family as defined by law or custom of the Indian child's tribe or, in the absence of law or custom, nieces, nephews, or first or second cousins as defined by ICWA. (See also Definition No. 11 "Extended Family", 25 USC 1903 (2).

25 USC 1903

30. Reservation: Indian Country as defined in 18 USC 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

18 USC 1151;

25 USC 1903 (10);

Minn. Stat. 257.351, subd. 13

31. Residence: The place where the person currently lives or has established a place of abode; provided that if the law or custom of the Indian child's tribe defines this term differently that definition shall control.

Tribal/State Agreement, Part I, E. 34

32. Secretary: The Secretary of the Interior.

25 USC 1903 (11);

Minn. Stat. 257.351, subd. 14

33. Significant Contact: The factors which guide a state court determination of an Indian child's tribe when the child is eligible for membership or is affiliated and connected with more than one tribe and is not a member of any tribe. (See SSM XIII-3543 for factors indicating significant contact.)

Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, B.2 (c).

34. Tribal Court: A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. When a tribe designates the tribal court of another tribe to act on its behalf, the term shall also include the tribal court of the other tribe.

25 USC 1903 (12)

35. Tribal Social Services Agency: A tribal program or a tribe's agency, however named, with responsibility for provision of social services to Indian families and children.

Minn. Stat. 257.351, subd. 16

36. Tribe With Which the Child has Significant Contacts: Any tribe where the Indian child may be eligible for membership; any tribe where a parent, Indian custodian, or extended family member seeking placement is a member or may be eligible for membership; any tribe where the child resides on the tribe's reservation regardless of membership eligibility; or any other tribe with which the child, or a parent, or an Indian custodian of the child has the more significant contacts.

25 USC 1903 (5);

Tribal/State Agreement, Part 1, E. 41

37. Voluntary Foster Placement: An out of home foster placement by a social services agency away from the home of the parent, Indian custodian or legal guardian of an Indian child where a parent may have the child returned upon demand. Voluntary foster placement requires court certification as well as signed voluntary placement agreement which specifies the child's legal status and spells out the rights and obligations of the child, parent(s) and agency, including the duty of the agency to return the child upon demand.

Adapted from Minn. Stat. 257.351, subd. 17

38. Voluntary Relinquishment: The free will, non-coerced consent of a parent or Indian custodian to permanently give up custody of a child, to have parental rights terminated and then have the child placed for adoption; the consent must be executed in writing and heard before a judge in a court of competent jurisdiction.

25 USC 1913

39. Ward of Tribal Court: An Indian child who is so considered by a tribal court. The ward of a tribal court is not necessarily the same as a "state ward" in which a child is free for adoption. An Indian child may be a ward of a tribal court without having parental rights terminated.

Any obligation by the LSSA to disclose or transmit confidential records, documents, or information to the tribe(s) or to involve the tribe(s) in case planning activities which requires disclosure of private or confidential information is strictly conditioned upon:

1. federal or state laws that require or authorize the LSSA to disclose private or confidential information to the tribe(s), it being understood that in order to achieve the purposes of ICWA and MIFPA, a tribe must have access to all data including confidential information regarding an individual with respect to its members; or
2. entry of an order, by a state, federal, or tribal court with jurisdiction over the parties and the subject matter, which requires or authorizes the LSSA to disclose confidential information to tribes.

When a LSSA or private child placing agency determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and requires continued involvement of the agency with the child for a period in excess of 30 days, and any subsequent stage of its involvement with an Indian child, the LSSA shall, upon request, give the tribal social services agency full cooperation including access to all files concerning the child.

**Adapted from Tribal/State Agreement, Part II, F
Inter-Agency Coordination XIII-3523**

To help insure coordination, understanding and implementation of the ICWA and MIFPA, the Minnesota Department of Human Services (DHS) strongly encourages LSSAs whose service areas include a tribe, or who have at least one child who is a member of a tribe on their case load to invite tribal representation on their multi-disciplinary child protection team.

Tribal/State Agreement, Part II, K

The LSSA should seek input from the tribe(s) in the assignment of social workers to cases involving Indian children, so that workers will be assigned who are sensitive to social and cultural standards and tribal issues.

When, according with the provisions described in the Social Service Manual section on Potential Out of Home Placement, the LSSA determines that conditions exist for a potential out of home placement of an Indian child, the agency shall notify the child's tribal social services agency of the

relevant conditions and the steps taken by the LSSA to remedy such conditions within seven days of the determination.

Minn. Stat. 257.352 subd. 2

When a LSSA or private child placing agency determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and requires continued involvement of 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.

Minn. Stat. 257.352 subd. 2

Involuntary Placements

XIII-3532

1. Notice Requirements. In any involuntary placement of an Indian child the LSSA shall provide notice as follows:

- a. in any involuntary child custody proceeding, the LSSA shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe;
- b. in any involuntary Indian child custody proceeding, notice of the proceeding shall be sent to the parents and Indian custodians, if any, and to any tribes that may be the Indian child's tribe, by registered mail with return receipt requested;
- c. the tribe(s), parent(s) or Indian custodian(s) receiving notice of a child custody proceeding has the right, upon request, to be granted twenty days, or such additional time as may be permitted under state law, from the date upon which the notice was received to prepare for the proceeding;
- d. the original or a copy of each notice sent shall be filed with the court together with any return receipts or other proofs of service;
- e. notice may be personally served on any person entitled to receive notice in lieu of mail service;
- f. if a parent or Indian custodian appears in court without an attorney, the court will inform him or her of the right to appointed counsel, the right to request that the proceedings be transferred to tribal court or to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent(s) or Indian custodian(s) is not already a party) to intervene in the proceedings; and
- g. if the court or a petitioning party has reason to believe that a parent(s) or Indian custodian(s) is not likely to understand the contents of the notice because of lack of adequate comprehension of written English, a copy of the notice shall be sent to the Bureau of Indian Affairs agency nearest to the residence of that person, requesting that

Bureau of Indian Affairs personnel arrange to have the notice explained to that person in the language that he or she best understands.

Fed. Reg. Vol. 44, No. 228, Nov. 26, 1979, B. 5

2. Content of Notice. Notices of involuntary placements required by this paragraph shall be written in clear and understandable language and shall include the information described in SSM XIII-3681, Appendix A: Content of Notice in Involuntary Placements.

3. Time Limits and Extensions

a. A tribe, parent or Indian custodian entitled to notice of a child custody proceeding has a right, upon request, to be granted an additional twenty days from the date upon which notice was received to prepare for participation in the proceeding.

b. The proceeding may not begin until all of the following dates have passed:

(1) ten days after the parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice;

(2) ten days after the Indian child's tribe (or Secretary if the Indian child's tribe is unknown to the petitioner) has received notice;

(3) thirty days after the parent or Indian custodian has received notice if the parent or Indian custodian has requested an additional twenty days to prepare for the proceeding; and

(4) thirty days after the Indian child's tribe has received notice if the Indian child's tribe has requested an additional twenty days to prepare for the proceeding.

c. The time limits listed in this section are the minimum time periods required by the Indian Child Welfare Act. The court may grant more time to prepare where state law permits.

Fed. Reg. Vol. 44, No. 228, Nov. 26, 1979, B. 6

Voluntary Placement Notice

XIII-3533

When an Indian child is voluntarily placed in any out of home placement, the LSSA involved in the decision to place the child shall give notice of the placement to the child's parent(s), Indian custodian(s), and tribal social services agency or designated tribal representative within seven days of placement, excluding weekends and holidays.

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

Minn. Stat. 257.353, subd. 2

Private Child Placing Agency Notice of Potential Preadoptive or Adoptive Placement

XIII-3534

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 services 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 services agency, including child placement services, and should additionally provide the birthparents of the Indian child with all information sent from the tribal social services agency in response to the notice. **Minn. Stat. 257.352, subd. 3.**

Notice of Good Cause Determination

XIII-3535

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

1. the parent(s) or the Indian custodian(s);
2. the tribe(s);
3. the child, if of sufficient age (See SSM XIII-3558); and
4. any extended family members who have sought placement.

Return of Child from Placement - Notice

XIII-3536

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

1. any other parent(s) whose parental rights have not been terminated;
2. any other Indian custodian(s) of the child;
3. the child's tribe(s); and
4. any other party to the placement proceeding.

Such notification must be in writing and specify the name and address of the person to whom the child has been returned.

The LSSA is required by P.L. 96-272 (Foster Care and Adoption Assistance Act) to conduct a periodic review of all voluntary and involuntary out of home placements of Indian children not less than every six months unless such reviews are being conducted by tribal social services or state court. In any review of the out of home placement of an Indian child, the LSSA will notify the tribe, parent(s), Indian custodian(s), extended family members and the child, if over the age of twelve (12). Each tribe in which the child is eligible for membership will receive notice, and has a right to participate in the review and have access to all files and documents pertaining to placement. A child over the age of twelve (12) also has a right to participate in the reviews. In reviews of out of home placements where parental rights have been terminated, the parent(s) or Indian custodian(s) of the child will not be notified of the review and do not have a right to participate.

Adapted from Minn. Stat. 257.353, subd. 3

<p>Jurisdictional Issues XIII-3540</p>

Identification of a Child as an Indian Child

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

1. whether the child is an Indian child; and
2. if so, the identity of the Indian child's tribe.

Minn. Stat. 257.352, subd. 1;

Minn. Stat. 257.353, subd. 1

The LSSA shall ask each child and parent(s) if they are Indian or have an ancestor who is Indian. Efforts to discover whether the child is an Indian must be documented in the case record. The case record must clearly indicate all agency actions taken for identification purposes. The **“IWCA Child Welfare Placement Preference and Considerations Documentation”** form (SSIS 44) must be used for this purpose. (See SSM XIII-3672 for form) Reasons to believe that the child is an Indian child might include, but are not limited to, the following:

1. any party to the case, Indian tribe(s), Indian organization or public or private agency informs the worker that the child is an Indian child;
2. any public or state licensed agency involved in child protection services or family support has discovered information that suggests that the child is an Indian child;
3. the child who is the subject of the proceeding gives the worker reason to believe he or she is an Indian child;
4. the residence or the domicile of the child, his or her biological parent(s), or the child's Indian custodian is known by the worker to be or is shown to be a predominantly Indian

community;

5. an officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

Adapted from Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, B.1 (c) (i-v)

Note: A child believed to be Indian must be treated as an ICWA eligible child until the tribe(s) indicates ineligibility for membership or fails to respond to notice and requests by LSSA for eligibility determinations.

Verification of Membership

XIII-3542

The LSSA and private child-placing agency must seek verification of:

1. the child's and/or child's parent(s) membership status; and/or
2. eligibility for membership from the child's tribe(s).

Contact for verification of membership can be made with the tribe(s)' social services agency by:

1. telephone and/or FAX; or
2. an office visit to the tribal social services office(s); or
3. a written communication.

All efforts to make contact regarding tribal identification and verification must be documented in writing and be part of the case record.

If the tribe(s) is not known, the agency shall seek information regarding the name of the child's tribe(s) from the Bureau of Indian Affairs. (See SSM XIII-3660 to XIII-3662 for addresses).

**Fed. Reg, Vol. 44, No. 228, Nov. 26, 1979, B. 6;
25 USC 1912 (a)**

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

A determination by the tribe that a child is a member of or eligible for membership in the tribe is conclusive. This shall not be construed as an amendment of present tribal enrollment policies.

Tribal/State Agreement, Part I, E. 21

The LSSA or private child-placing agency shall provide all tribes with which the Indian child is eligible for membership, or has significant contacts, notice of any child custody/placement proceedings, voluntary placements, and out-of-home placements and make available all case information in order to assist the tribe(s) in making a recommendation regarding the Indian child.

Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, B. 2 (b)

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

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

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

Adapted from Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, B. 2 (c)

The designation of the tribe with most significant contact is done to facilitate decision making but shall not be a rigidly applied concept that prohibits input from all interested tribe(s)..

1. General Requirements. Once the LSSA has determined that a proposed Indian child custody proceeding is subject to ICWA and MIFPA and has identified the Indian child's tribe(s) as required by SSM XIII-3542 and SSM XIII-3543, the LSSA, prior to initiating any such proceeding in court, shall contact the child's tribe(s) to determine whether the child is a ward of tribal court and/or is

domiciled on an Indian reservation. If either of these conditions is determined to exist, the LSSA shall further determine whether the child is located on or off the reservation, and the LSSA must comply with the provisions of paragraphs (2) through (6) of this section.

2. Child is a Ward of Tribal Court

a. Except in an emergency as described in subparagraph (2)(b), any proposed child custody proceeding involving an Indian child who is a ward of tribal court, regardless of the residence or domicile of the child, must be referred to the tribal social services agency for appropriate proceedings in tribal court. The LSSA is encouraged to inform the parent(s) or Indian custodian of the referral. Following the referral, the LSSA should provide such technical or professional advice, support or cooperation as the tribal social services agency or designated tribal representative may reasonably request.

b. In case of an emergency involving an Indian child who is a ward of tribal court and who is located off the reservation, the LSSA may initiate a removal or placement of the child by state court in order to prevent imminent physical damage or harm to the child in the manner and subject to the requirements of SSM XIII-3590.

3. Child Resides or is Domiciled Within an Indian Reservation and is not a Ward of Tribal Court

a. Except in a case of emergency as described in subparagraph (3)(b), the LSSA shall refer any proposed child custody proceeding involving an Indian child to the tribal social services agency for appropriate proceedings in tribal court. This requirement applies to a child who resides or is domiciled within any Indian reservation where there is a tribal court vested with jurisdiction over child custody placement proceedings by the reservation's governing body. The LSSA is encouraged to provide such technical or professional advice, support and cooperation as the designated tribal representative may reasonably request.

b. In case of an emergency involving an Indian child who resides or is domiciled within an Indian reservation but who is located off the reservation, a removal or placement may be initiated in state court in the same manner as provided in paragraph (2)(b) for wards of tribal court.

4. Child is not a Resident or Domiciliary of an Indian Reservation or a Ward of Tribal Court.

a. Except in a case of emergency as described in subparagraph (4)(b), the LSSA shall refer any proposed Indian child custody proceeding involving an Indian child to the tribal social service agency for appropriate proceedings in tribal court. This requirement applies to a child whose tribe has established a tribal court and vested it with jurisdiction over child custody placement proceedings but who is neither a resident nor a domiciliary of an Indian reservation. The LSSA shall give written notice of any referral pursuant to this subparagraph to the child's parent(s) or Indian custodian, the designated tribal representative and the tribal court and shall make the referral unless:

- (1) the LSSA, after consulting with the designated tribal representative, concludes that there is good cause to the contrary;
- (2) either parent of the child objects, in writing, to the referral; or
- (3) the designated tribal representative declines, in writing, to accept the referral or the tribal court declines, in writing, to accept jurisdiction over the proposed proceeding.

Nothing herein shall be construed to limit the right of the tribe(s), parent(s) or Indian custodian to seek transfer of jurisdiction to tribal court of any child custody/placement proceeding subsequently brought in state court pursuant to this paragraph.

Any time a referral is declined pursuant to this subparagraph, the LSSA should advise the parent(s) or Indian custodian(s) that the provisions of ICWA and MIFPA (including but not limited to the required placement preferences and notices) govern placements of the child and that the child may not be placed in voluntary out of home placement unless the consent is validated by the juvenile court.

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

b. In case of an emergency involving an Indian child who is neither a ward of tribal court nor a resident or domiciliary of an Indian reservation, a removal or placement may be initiated in state court in the same manner as provided in subparagraph (2)(b) for wards of tribal court.

5. Police Hold Permitted. Except where the child's tribe has exclusive jurisdiction over such matters, nothing in this part (Determination of Tribal or State Court Jurisdiction) shall be construed to prohibit an Indian child from being taken into custody and placed in a shelter care facility or a relative's home by a peace officer pursuant to Minn. Stat. 260.165, subd. 1 (c)(2) for up to 72 hours as permitted by Minn. Stat. 260.171, subd. 2 (d), so long as no CHIPS Petition has been filed.

6. Child Custody Proceedings Brought in Violation of the Social Services Manual. If an LSSA initiates a child custody proceeding or learns that an Indian child custody proceeding has begun in state court, which, according to the provisions of this part of the Social Services Manual (Determination of Tribal or State Court Jurisdiction), the LSSA should have referred to the tribal social services agency to initiate appropriate action in tribal court, the LSSA, at its own initiative or at the request of the Indian child's tribe(s), parent(s) or Indian custodian, shall immediately request the court to transfer the case to tribal court. Refusal by the LSSA to seek such a transfer shall not be construed to limit the right of the child's tribe(s), parent(s) or Indian custodian to petition the court to transfer the case to tribal court pursuant to ICWA, MIFPA or this manual.

DHS recognizes its responsibility to give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

25 USC 1911 (d); Adapted from Minn. Stat. 257.354, subd. 4

DHS recognizes that, to the extent a child is otherwise eligible for social services under Minnesota Law, a tribal court may order a placement through an LSSA provided that notice and opportunity to be heard in tribal court is provided to the LSSA as required by Minn. Stat. 257.354, subd. 4. This may require the LSSA to provide services in connection with the placement as provided in similar placements by state courts.

Where a case is transferred to the child’s tribe, the LSSA, if requested by the tribal social services agency, should assist the parent(s) or Indian custodian(s) and the tribal social services agency to place the child in foster care or make such other arrangements as may be appropriate under the circumstances.

Tribal/State Agreement, Part 1, C. 1

General Practice Provisions

XIII-3550

Tribal Involvement

XIII-3551

To reduce the potential for cultural bias in making decisions affecting Indian children and families, the LSSA must involve the tribal social services agency or designated tribal representative(s), in any child protection intervention and service provision; the cultural and social standards of the Indian community from which the child comes shall apply. This involvement will occur at the earliest possible time after undertaking and carrying out any child abuse or neglect assessment investigation.

Availability of Records and Data; Confidentiality XIII-3552

To enable the tribal social services agency or designated tribal representative to participate constructively in all cases involving the custody of Indian children as provided by ICWA and MIFPA, the LSSA shall make available to the tribal social services agency or the designated tribal representative all case record materials, including reports, family social histories, and other documents and case information. This shall occur as soon as a determination is made that maltreatment has occurred, protective services are needed, or 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 thirty days, whichever occurs first. (See SSM XIII-3676 for **ICWA/MIFPA Social Worker Checklist (SSIS 42)**) **Minn. Stat. 257.352, subd. 2**

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

1. federal and state laws that require or authorize the LSSA to disclose private or confidential information to Indian tribes; and
2. applicable tribal, state or federal court orders that require such disclosure.

Payment of Costs

XIII-3553

The costs of providing foster care for Indian children must be paid by the LSSA regardless of whether the child is placed by a state or tribal court or pursuant to a voluntary placement agreement facilitated by a LSSA or a tribal social services agency that is approved or certified by tribal or state court, provided that the placement is in a state or tribally licensed home, and the tribal social services agency or the tribal court provides the LSSA notice and an opportunity to be heard regarding the need for the placement. In any such placement, disputes concerning the financial responsibility for the costs of the placement shall be settled in the manner prescribed in Minn. Stat. 256G.09. The amount of the LSSA's obligation is determined according to the same eligibility standards and rates of support applicable to other children for whom the LSSA pays foster care. (See also Minn. Stat. 257.354, subd. 4)

Tribal/State Agreement, Part IV, A

Risk Assessments XIII-3554

The prevailing standards in the American Indian community shall guide all investigations and assessments. There must be a causal relationship between the conditions that exist and danger to the child. Poverty, inadequate housing, alcohol abuse or non-conforming social behavior alone is not sufficient reason to remove a child.

Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, D.3

Under the ICWA, an Indian child shall not be removed from his or her family unless the child is in danger of suffering serious emotional or physical damage which is supported by clear and convincing evidence in the case record, including testimony of a qualified expert witness. (25 USC 1912 (e)). In an emergency removal situation, an Indian child shall not be removed except to prevent imminent physical damage or harm.

Whenever possible, assessments of parents and children shall be done in consultation with an individual with substantial knowledge of:

1. prevailing social and cultural standards; and

2. child-rearing practices within the Indian community..

Efforts by the LSSA to have the foregoing assessments conducted with an individual described above should be documented by the LSSA.

Placement Preferences XIII-3555

Standards to be applied in meeting the preference requirements shall be the prevailing social and cultural standards of the community in which the parent(s) or extended family resides or with which the parent(s) or extended family members maintain social and cultural ties.

25 USC 1915 (d)

Any LSSA or private child placing agency considering placement of an Indian child shall make reasonable efforts to identify and locate extended family members.

Minn. Stat. 257.352, subd. 4;

Minn. Stat. 257.353, subd. 5

On the issue of placement preference, the LSSA shall defer to the tribe in which a child is eligible for membership.

Part 9560.0535, subpart 4, B

Order of Placement Preference XIII-3556

In any out of home placement of an Indian child, the child must be placed in:

1. the least restrictive setting;
2. which most approximates a family;
3. in which his or her special needs may be met; and
4. which is in reasonable proximity to his or her home.

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

1. a member of the Indian child's extended family;
2. a foster home licensed, approved or specified by the Indian child's tribe;
3. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

25 USC 1915 (b)

In any out of home placement of an Indian child pursuant to a court order or court certification (25 USC 1913 (a)), the LSSA will place the child in accordance with the placement preference established by the ICWA, unless the child's tribe has established by resolution a different order of preference.

25 USC 1915 (c)

If a tribe(s) has a different placement preference established by resolution, the tribe(s) must formally notify the Minnesota Department of Human Services of this resolution. A copy of the resolution should be sent to the Commissioner and the Commissioner should forward it to the LSSAs.

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

In circumstances where a child requires placement in a non-relative home, or in a placement not within reasonable proximity to the child's home, or in placement where siblings are separated and not placed in close proximity, the LSSA will make active efforts to assure that the child is placed as quickly as possible in accordance with the preferences prescribed in this section.

Placement Outside of Order-Good Cause XIII-3557

All adoptive, pre-adoptive and foster care placements of Indian children shall be made strictly according to the placement preferences of ICWA (25 USC 1915) except when there is good cause to the contrary. The burden of establishing good cause to the contrary is on the party who seeks a placement outside of the ICWA placement preferences. If a determination is made to depart from the ICWA placement preferences based on the extraordinary physical or emotional needs of the child, the LSSA shall provide the designated tribal representative with a written statement describing such needs and explaining why they cannot be met by a placement within one of the ICWA placement preferences. If a determination is made to depart from the ICWA placement preferences because of the unavailability of suitable families who meet the placement criteria, the LSSA shall evaluate the families according to the social, economic and cultural standards prevailing in the Indian community in which the parent(s) or extended family members maintain social and cultural ties and provide the designated tribal representative with a copy of that evaluation. If good cause to the contrary is found based on the child's objection, the parent(s) have the right to have the court review the objection.

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

Parental and Child Preference XIII-3558

Where an Indian child is of sufficient age and maturity to be able to express a knowledgeable and reasoned opinion regarding his/her placement preference, and where otherwise appropriate under all surrounding circumstances, the LSSA will inform the child's tribe(s) of the child's preference.

The LSSA should also inform the child's tribe(s) or tribal social services representative(s) of the placement preference of the parent(s). The child's parent(s) have the right to have the issue of placement or a change in placement determined by the juvenile court.

25 USC 1915 (c).

Active Efforts to Prevent Placement XIII-3559

The prevailing standards of the tribe shall guide all services and decisions on a case. Except in emergency situations, the agency shall make active efforts to provide services to the family after investigation and before making a decision to remove the child, in order to prevent the breakup of the family and to avoid the need for placement.

Active efforts mean active, thorough, careful and culturally appropriate efforts by the LSSA to fulfill its obligation under ICWA and MIFPA to prevent placement of an Indian child and at the earliest possible time to return the child to the child's family once placement has occurred.

Tribal/State Agreement, Part 1, E. 4

Active efforts include but are not limited to:

1. The tribe or designated tribal representative being invited to participate at the earliest point and their advice is actively solicited.

Adapted from Part 9560.0221, subpart 3, E

2. Involvement of an expert with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the tribal community that can evaluate the family circumstances and assist in developing a case plan that uses tribal and Indian community resources.

3. Concrete services such as financial assistance, food, housing, etc., are provided if needed.

4. Visitation arrangements (including transportation assistance) to keep the child in close contact with parent(s), siblings, and other relatives.

Note: Whenever possible, visitation shall occur in the home of the parent(s) or Indian custodian(s), the home of other family members, or in some other non-institutional setting that permits the child and those with whom the child is visiting to have natural and unsupervised interaction.

5. Parent(s) and children are referred to Indian agencies for services.

6. Extended family members are contacted as a resource for child.

Adapted from DHS Social Worker Checklist for Indian Child Welfare Act, and
Minnesota Indian Family Preservation Act

Case Plan

XIII-3560

Requirements XIII-3561

1. The agency shall prepare a written case plan after consultation with and participation by the tribe(s), if the tribe has intervened.

Minn. Stat. 260.191, subd. 1e

The case plan shall:

a. ensure that active efforts are made to:

- (1) eliminate the need for placement of a child, if possible;
- (2) facilitate the return of a child; and/or
- (3) eliminate the need for an emergency hold or other court hearing.

b. take into account the prevailing social and cultural conditions in the child's Indian community; and

c. stress the use and involvement, where available, of community services and resources appropriate for Indian families;

25 USC 1915 (d)

d. encourage maintenance of an on-going familial relationship between the parent(s) or Indian custodian(s) and the child, as well as between the child and siblings, throughout the time the LSSA is engaged in efforts to prevent family breakup;

e. be based on services designed to effectively address and eliminate the danger to the child; and

f. be formulated with the direct collaboration of the parent(s) or Indian custodian(s), the child, if of sufficient age, and the tribe(s).

g. ensure maximum involvement of the Indian parent(s) or Indian custodian(s) and tribal social services or designated tribal representative; and

h. focus on requirements for family members, which are related to an identified risk factor, noted in the child protection assessment. In emergency situations, the case plan will focus on immediate actions directed at keeping the child in the home, if possible,

by resolving circumstances which create immediate endangerment to the child.

2. To ensure that each parent has his or her own individualized case plan, copies of all case plans should be provided to the parent(s), and/or Indian custodian(s), and must be provided to the tribal social services agency or designated tribal representative(s).

Minn. Stat. 257.071, subd. 1;

Part 9550.0090, subpart 1, F

Content

XIII-3562

Contents of the placement case plan must be consistent with Minn. Stat. 257.071, subd. 1; 260.191, subd. 1e, and Part 9560.0603. Contents of a protective services case plan must be consistent with Minn. Stat. 260.191, subd. 1e.

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

Reunification Services

XIII-3563

Once an Indian child has been placed in out of home placement, the LSSA, in cooperation with the tribal social services agency, shall:

1. make active efforts to provide remedial services and rehabilitative programs designed to return the child to the custody of the parent(s) or Indian custodian(s);

25 USC 1912 (d)

2. develop a plan designed to effectively address and eliminate the problems that necessitated the voluntary placement; and

Part 9560.0221, subpart 3, E

3. collaborate directly with the parent(s) or Indian custodian(s), the child, if of sufficient age, and the tribe(s) in developing the plan.

The LSSA, in cooperation with the tribe(s) social services agency will regularly monitor the placement. (See SSM XIII-3566)

Adapted from Minn. Stat. 260.191, subd. 1 e

When a placement ends and the child is returned to the parent(s) or Indian custodian(s), the LSSA, in cooperation with the tribal social services agency will provide the parent(s) or Indian custodian(s) with information on the special needs, if any, of the child.

Where necessary, the LSSA will instruct the parent(s) or Indian custodian(s) in:

1. how to best meet the child' special needs; and

2. assisting the child in adjustment to the familial home.

Cooperation and Access to Records**XIII-3564**

When the LSSA prepares a social history, report, or predispositional study for the court concerning an Indian child, the LSSA shall seek input from the child's tribal social services agency or designated tribal representative(s) in the preparation of the study. The study will describe in detail the role of the tribe(s) and will fully state the tribe(s) recommendation and such other information provided by the tribe(s).

Note: In addition, the tribe(s) may submit a separate report to the court. For more information, please refer to the section on Tribal Involvement (SSM XIII-3515).

The LSSA 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 with the tribal social services agency of an agreement that the tribal social services agency will maintain the files according to the statutory provisions applicable to this data.

25 USC 1912 (c);

Minn. Stat. 257.352, subd. 2

Post-Placement Services**XIII-3565**

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

The plan will be:

1. consistent with the best interests of the child;
2. specific about meeting any special needs of the child;
3. consistent with the culture and customs of the child's Indian community;
4. formulated with the direct collaboration of the child, if of sufficient age;
5. whenever possible, formulated with the collaboration of other members of the child's extended family;
6. specific about the maintenance of an on-going familial relationship between the child, his/her siblings and other members of the child's extended family;
7. specific about how the LSSA and the tribe(s) will also provide the foster home or facility or pre-adoptive home with information on the background and special needs, if any, of the child;

8. specific about how the LSSA and the tribe(s) will provide instruction in the necessary parenting skills in how to best meet the child's special needs; and

9. specific about how the LSSA and the tribe(s)' will assist the child in adjusting to the termination of parental rights, foster care or pre-adoptive placement.

The LSSA, in cooperation with the tribe(s)' social services agency, shall regularly monitor any out of home placements:

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

Periodic Review of Placement**XIII-3566**

The LSSA is required by Public Law 96-272 (Foster Care and Adoption Assistance Act) to conduct a periodic review of all out of home placements of children not less than every six months unless reviews are being conducted by tribal social services or state court. A child over the age of twelve has a right to participate in the reviews.

At a minimum, the review will evaluate the suitability of the out of home placement, including but not limited to suitability of the placement under ICWA, determine whether continued out of home placement is necessary and appropriate or whether the child should be returned home, or if not, what permanent placement is consistent with the child's best interests. The review will also evaluate the services rendered to the child and family, and efforts made to facilitate visitation with parent(s), Indian custodian(s), siblings and extended family.

Adapted from Minn. Stat. 260.191, subd. 3 (a) and (b).

Potential Placement**XIII-3570**

Notice of Potential Placement**XIII-3571**

In order to encourage and aid the involvement of an Indian child's tribe(s) at the earliest possible time in any child protection intervention, the LSSA shall give notice of a potential placement of an Indian child in the manner required. (See SSM XIII-3530)

The requirements of the following sections must be met whenever an LSSA is considering a potential out of home placement:

Cooperation and Access to Records, see SSM XIII-3552.

Active Efforts to Prevent Placement, see SSM XIII-3559.

Case Plan Requirements, see SSM XIII-3560.

Voluntary Out of Home Placement XIII-3580

Voluntary Out of Home Placement Consent XIII-3581

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

1. not be given prior to or within ten days after birth;
2. be in writing; and
3. be recorded before a judge.

(See SSM XIII-3682 for content of voluntary out-of-home placement consent)

25 USC 1913

Tribal Social Services Involvement XIII-3582

Before accepting a voluntary consent to any out of home placement, the LSSA shall:

1. inform the parent(s) of the legal requirement to notify the tribe even if the parent(s) objects;

Minn. Stat. 257.353, subd. 2

2. encourage the parent(s) or Indian custodian(s) to contact the tribe regarding available services to assist them in retaining custody of the child or to further the parent-child relationship during placement;
3. make active efforts to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family;

Adapted from 25 USC 1912 (d);

Minn. Stat. 260.012 (a)

4. and refer the parent(s) or Indian custodian(s) to American Indian agencies for provision of services. These may include:

- a. the extended family;
- b. tribal social services; and
- c. other culturally appropriate programs aimed at preventing family break-up, i.e., traditional practitioners where available and individual Indian care givers who have skills to help the family.

Fed. Reg. Vol. 44, No. 228, Nov. 26, 1979, D. 2, Commentary

Parents Understanding of Voluntary Placement Consent XIII-3583

Before executing a consent to voluntary out of home placement of an Indian child, the LSSA shall explain the content of the consent to the parent(s) or Indian custodian(s). In every case, the voluntary consent will not be valid unless the terms and consequences of the consent were fully explained in detail and were fully understood by the parent(s) or the Indian custodian(s). In a case where there is doubt regarding the person's ability to read or understand English, the consent must be read to or translated into a language that the parent(s) or Indian custodian(s) understand.

Adapted from 25 USC 1913 (a)

The requirements for the content of a voluntary out of home placement consent form are set forth in Appendix B. (See SSM XIII 3682)

State Court Validation of Voluntary Placement Consent XIII-3584

The LSSA shall request that a state court:

1. validate a voluntary consent to out of home placement of an Indian child, in writing and

- recorded before a judge of a court of competent jurisdiction;
2. certify information from the **Voluntary Placement Agreement Consent (DHS 3374) (SSIS 38)** to include the content of the voluntary out of home placement consent form (See SSM XIII-3682 Appendix B);
 3. certify that the parent(s) or Indian custodian(s) fully understand their rights, as well as legal consequences of their consent to voluntary out of home placement. The certification by the court should list those rights, including those listed in the content of the voluntary out of home placement consent form, as well as the consequences.
- 25 USC 1913(a)** When there is a voluntary out of home placement, the steps set forth in the following sections must also be followed:
Notification to Tribe, see SSM XIII-3530.
Post-Placement Services, see SSM XIII-3565.

Termination or Change in Placement in a Voluntary Placement XIII-3585

Whenever there is a change in the voluntary placement of an Indian child, the provisions of ICWA and MIFPA must be followed, including:

1. notice requirements: Minn. Stat. 257.352, 257.353, subd. 2, 25 USC 1912, and the Voluntary Placement Notice requirements in SSM XIII-3580, and
2. placement preferences.

25 USC 1915

The new placement shall be in accordance with the directions in the Social Services Manual regarding placement preferences, (See Placement Preferences, SSM XIII-3555 to 3558) unless the child is returned to the parent(s) or Indian custodian(s) from whose custody the child was originally removed. The LSSA should notify the tribe(s) at the earliest opportunity by phone and in writing of the need to change the Indian child's placement.

Adapted from 25 USC 1912(a);

25 USC 1916 (b)

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

The requirements of the following section must be met when a child is returned to the child's parents or an Indian custodian from a placement: Return of Child from Placement - Notice, see SSM XIII-3536.

Petition for Review of Voluntary Placement XIII-3586

When the LSSA petitions a state court for review of a voluntary out of home placement to determine if the placement is in the best interest of the child, pursuant to Minn. Stat. 260.131, subd. 1a, the LSSA shall send notice (See Notice, SSM XIII-3533) and a copy of the petition to:

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

The LSSA shall seek input from the tribal social services or designated tribal representative regarding the necessity for continued out of home placement. The tribe(s) position regarding

continued out of home placement must be documented in the case record.

Voluntary Into Involuntary Placement XIII-3587

Whenever the LSSA petitions a state court to change a voluntary out of home placement into an involuntary out of home placement, the LSSA shall notify the tribe(s) and the parent(s) or Indian custodian of the child. (See Notice, SSM XIII-3532) Notification shall include:

1. the determination to petition a state court to change a voluntary out of home placement into an involuntary out of home placement and the reasons for this;
2. informing the parent(s) or Indian custodian(s):
 - a. of their rights to withdraw consent to the out of home placement and obtain the immediate return of the child, according to the provisions set forth in SSM XIII-3682, Appendix B, #8, d and SSM XIII-3536, Return of Child from Placement –Notice.
 - b. that the return must be made unless the return of custody would likely cause an emergency resulting in imminent physical harm to the child.

The LSSA shall not seek to petition any court for an involuntary out of home placement where such petition is based solely upon the prior voluntary placement of the child.

Emergency Removal of an Indian Child XIII-3590

Emergency Removal When Permitted XIII-3591

The LSSA may initiate a removal or placement of an Indian child in an emergency as provided in this paragraph. Before initiating an emergency removal or placement, the LSSA should document by evidence in the case record that there exist:

1. particular conditions in the child's home that are likely to result in serious physical damage or harm to the child; and
2. a direct cause and effect relationship between such conditions and imminent danger to the child.

Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, D. 3 (c)

The LSSA shall ensure that any such removal or placement terminates immediately upon removal of the threat of imminent damage or harm. The LSSA shall then promptly take appropriate steps, in cooperation with the designated tribal representative, to return the child to the parent or Indian custodian, to transfer the case to the jurisdiction of the child's tribe, or to bring a child custody proceeding in the state court if the state court retains jurisdiction pursuant to the information in the section regarding jurisdiction over non-resident or domiciliary children (See SSM XIII-3544)

25 USC 1922;

Fed Reg., Vol. 44, No 228, Nov. 26, 1979, B.7(c)

When an LSSA initiates an emergency removal steps in the following sections must also be followed:

Identification of a Child as an Indian Child, see SSM XIII-3541.

Risk Assessments, see SSM XIII-3554.

Initial Response/Notification XIII-3592

Whenever the LSSA determines that circumstances exist that would justify the emergency removal of an Indian child pursuant to SSM XIII-3590 (Emergency Removal; When Permitted), the LSSA shall contact the social services agency of the child's tribe(s) or the designated tribal

representative thereof to seek the tribe's input and active involvement in the risk assessment process. Whenever possible, the initial contact shall be made within the following time periods:

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

The LSSA shall make all reasonable efforts to contact and involve the Indian child's tribe prior to initiating an emergency removal; however, where the LSSA determines that delay would put the child at risk of imminent physical damage or harm, it may initiate such removal prior to contacting the tribe.

25 USC 1922

The LSSA case record must document efforts directed at notification and efforts to seek involvement of the child's tribe.

Emergency Contact List XIII-3593

The LSSA should use the list of emergency contacts developed in cooperation with the tribes and distributed by the Department of Human Services. (See SSM XIII-3660 for the Emergency Contact List for Tribal Social Services)

Order of Preference in Emergency Placements XIII-3594

In an emergency placement, an Indian child shall be placed according to the order of placement preferences outlined in the ICWA. (See Placement Preferences, SSM XIII-3555)

25 USC 1915 (b)

Continued Placement Beyond 72 Hours XIII-3595

If the LSSA concludes that continued out of home placement is necessary for a period longer than 72 hours and if the case has not been previously transferred to tribal court, a 72-hour hold and subsequent detention hearing will be held in state court.

Minn. Stat. 260.172, subd. 1 and 2

If the court orders continued out of home placement following an emergency detention hearing, the LSSA shall request the court to set a fact finding hearing as soon as possible and in no event later than ninety (90) days beyond the date of court ordered out-of-home placement.

Minn. Stat. 260.172, subd. 4

If at any time prior to the fact finding hearing, the LSSA determines that out of home placement is no longer necessary to prevent imminent physical damage or harm to the child, the LSSA shall immediately take necessary action, including obtaining necessary court orders, to return the child to the custody of the child's parent(s) or Indian custodian(s).

Adapted from 25 USC 1922;

Minn. Stat. 260.171, subd. 1

Once an emergency placement lasts beyond 72 hours and becomes a child custody proceeding under ICWA/MIFPA, the LSSA is required to follow the relevant notice requirements for involuntary child custody proceedings (See SSM XIII-3610), or the notice requirements for

voluntary placements. (See SSM XIII-3581, Appendix A, Content of Notice in an Involuntary Placement)

Affidavits for Placements Beyond 72 Hours XIII-3596

Whenever the LSSA petitions state court to hold an Indian child beyond the 72 hour emergency hold, the petition shall be accompanied by an affidavit containing certain verified information. (See SSM-XIII-3683, Appendix C, for the specific information to be included).

Involuntary Out of Home Placement XIII-3610

Criteria, Assessment, Documentation XIII-3611

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

Services Prior to Court Action XIII-3612

Before filing an action in state court for the involuntary out of home placement of an Indian child, the LSSA shall make active efforts to prevent placement. (See SSM XIII-3559)

25 USC 1912 (d)

The LSSA shall provide social services to the family when:

1. the circumstances of the family, when viewed in light of the prevailing social and cultural standards and way of life of the Indian community, require the provision of social services for the protection of the child and in support of the parent-child or Indian custodian-child relationship; and
2. the services actively provided by the LSSA are designed to prevent the breakup of the family. The services will be designed to effectively address and eliminate problems that put the child at risk of out-of-home placement.

Adapted from Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, D. 2

When a case plan is developed, the requirements of the following section must also be met: Case Plan Requirements, see SSM XIII-3560.

Petition to State Court for Involuntary Out of Home Placement XIII-3613

The LSSA will petition the state court for an involuntary out of home placement only after it has undertaken active efforts to prevent breakup of the Indian family and the efforts have proved unsuccessful or an emergency exists which makes active efforts impossible. (See General Practice Provision, Active Efforts, SSM XIII-3559)

25 USC 1912 (d)

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

1. make available to the tribe(s) the entire case file. (See SSM XIII-3552 for information about cooperation and access to records)
2. consult with tribe(s) to determine whether the tribe(s) wishes to assert jurisdiction over the matter. (See SSM XIII-3540 for information about how to determine jurisdiction)
3. seek input from the tribe(s) regarding provision of services, which shall be in the best interest of the Indian child. (See SSM-3559 for information on tribal involvement).
4. make every effort to plan with the family to eliminate the need for continued involuntary out-of-home placement. (See SSM XIII-3563 for information on reunification services)

The LSSA shall not petition the state court for any involuntary out of home placement of an Indian child when the only grounds for the petition is:

1. evidence of community or familial poverty;

2. crowded or inadequate housing; or
3. alleged alcohol abuse or other nonconforming social behaviors on the part of the parent(s) or Indian custodian(s) unless it can clearly demonstrate that such factors cause serious emotional or physical damage to the child by clear and convincing evidence, supported by testimony of an expert witness familiar with the prevailing social and cultural conditions and way of life of the Indian community.

Adapted from the Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, D. 3(c)

With every new petition or amendment to the petition, the LSSA shall notify the parent(s) or Indian custodian(s) and the child's tribe(s). (See Notice, SSM XIII-3532)

Petition Content XIII-3614

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

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

Content of Notice, see Appendix A, SSM XIII-3681.

Cooperation and Access to Records, see SSM XIII-3552.

Payment of Costs, see SSM XIII-3553.

Reunification Services, see SSM XIII-3563.

Periodic Review of Placement, see SSM XIII-3566.

Notice Requirement for Return of Child from Placement, see SSM XIII-3536.

Post-Placement Services, see SSM XIII-3565.

Placement Preferences, see SSM XIII-3555.

LSSA Social Studies and Reports XIII-3615

Whenever the LSSA prepares a social study, report or predisposition study pursuant to Minn. Stat. 260.151; 260.181, subd. 2; 260.191, subd. 2; 260.193, subd. 8 (i), or any similar statute, the LSSA should consult with the tribal social services agency or designated tribal representative(s) in the preparation of the study. The tribe may submit a separate study and/or report.

Record of Placement Determination XIII-3616

For each involuntary out of home placement determination, the LSSA shall:

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

Whenever siblings are not placed together, the record should:

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

When the LSSA, in conjunction with the child's tribe, determines that placement cannot be made within any of the preference categories, the efforts to find suitable placement within such categories shall be stated in detail, including the names and addresses of the extended family, and the tribal licensed or approved homes contacted. The record will also document in detail the on-going efforts of the LSSA to comply with the order of preference.

25 USC 1915 (e)

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

Return of a Child from Placement-Notice, see SSM XIII-3536.

Voluntary Relinquishment of Parental Rights XIII-3620

General Requirements XIII-3621

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

1. if the child is an Indian child; and
2. the child's tribal affiliation.

(See SSM XIII-3540 to XIII-3544)

Jurisdiction shall be decided as provided in SSM XIII-3544.

All parent(s) seeking to voluntarily terminate their parental rights shall be informed that: the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent; and.

2. after the entry of the final decree of adoption in any State court the parent may withdraw consent upon the grounds that the consent was obtained through fraud or duress and may petition the court to vacate the decree and return the child to the parent.

Adapted from 25 USC 1913 (c) and (d)

The LSSA shall advise the parent(s) and Indian custodian(s) that:

1. the ICWA and MIFPA requirements of notification and placement preference govern the action of termination of parental rights proceedings 25 USC 1915 (a) and (b); Minn. Stat. 257.352, subd. 2; SSM XIII-3530 (Notice) and SSM XIII-3555 (Placement Preferences)); and
2. they may pursue the relinquishment of parental rights for the adoption of the Indian child through a proceeding in the tribal court of the child's tribe, if available.

Adapted from the Fed. Reg., Vol. 44, No. 228, Nov. 26, 1979, C. 1

Note: The LSSA should refer the parent(s) or Indian custodian(s) to the tribal social services agency or designated tribal representative for further information regarding tribal court procedures.

When a validation of a voluntary consent to relinquish parental rights or adoption is to proceed in state court, the LSSA should contact the tribal social services agency or designated tribal representative(s) and request that the tribe become involved to assure that the consent is voluntary and does not involve fraud or duress. The efforts of the LSSA to secure the involvement of the tribal social services agency or designated tribal representative will be documented. The documentation shall be sent to the tribe upon the tribe's request.

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

25 USC 1912 (b)

When a parent of an Indian child is seeking to voluntarily relinquish parental rights the

requirements of the following section must be met:
Active Efforts, see SSM XIII-3559.

Explanation of Consent to Relinquish Parental Rights XIII-3622

Before having a parent(s) or Indian custodian(s) execute a consent to relinquish parental rights of an Indian child, the LSSA shall explain the content of the consent to the parent(s) or Indian custodian(s) and ensure that the consequences are understood. In every case, a parent(s) or Indian custodian(s) shall not be permitted to sign the consent until the person has read or, in cases where there is doubt about reading ability or understanding of consent, has had the consent read and the meaning explained to the individual..

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

Content of Consent XIII-3623

The consent document shall contain information described in Appendix E. (see SSM XIII-3685)

The information required for the content of a voluntary termination petition is described in Appendix F. (see SSM XIII-3686)

For information on: Notification to the Tribe, see SSM XIII-3533.

Post -Placement Services, see SSM XIII-3565. **Withdrawal of Voluntary Consent XIII-3624** In any voluntary proceeding for termination of parental rights to, or adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

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

25 USC 1913 (d)

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

1. the parent(s) or Indian custodian(s) voluntarily consents to out of home placement of the child;
2. a court order for out of home placement was previously entered in accordance with 25 USC 1912 and remains in effect; or
3. return of custody would likely cause an emergency resulting in serious physical damage or harm to the child.

If the child is returned to the custody of the parent(s) or Indian custodian(s) following withdrawal of the consent to relinquish parental rights, the LSSA, in cooperation with the tribe(s) social services agency, shall undertake active efforts for reunification. (See Active Efforts, SSM XIII-3559).

Involuntary Termination of Parental Rights XIII-3630

Criteria, Assessment, Documentation XIII-3631

The LSSA shall not begin a proceeding for the involuntary termination of parental rights to an Indian child unless an assessment, which has been documented in the case file, concludes that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Services Prior to Court Action XIII-3632

Before filing an action in state court for the involuntary termination of parental rights of an Indian child, the LSSA shall:

1. make active efforts to provide social services to parents, Indian custodian(s) and the child for protection of the child and support of the family. Active efforts shall continue until a judicial determination regarding permanency is made. Active efforts shall meet the requirements described in the General Practice Provisions, Active Efforts, SSM XIII-3559;
2. complete a long term plan for permanency that, among other things, contains measures that are likely to eliminate the physical and emotional threats that justify the termination;
3. explore all potential alternative dispositions which may be preferable to a termination, including but not limited to transfer of legal custody to a relative, permanent foster care with relatives/extended family, consistent with current Minnesota law;
4. if requested, make available to the tribe all records relevant to the case; and
5. consult with the tribe(s) to determine whether the tribe(s) wishes to assert jurisdiction over the matter;
6. formulate with the tribe(s) a mutually acceptable course of action which is in the best interest of the child; and
7. make every effort with the parent(s), Indian custodian(s) and the tribe(s) to agree to family service plans and legal arrangements designed to eliminate the need for filing a petition.

When an LSSA brings a petition for the involuntary termination of parental rights, the requirements in the following sections must be met:

Petition Content for Involuntary Termination of Parental Rights of an Indian Child, see Appendix G (SSM XIII-3687).

Tribal Notification, see SSM XIII-3532.

Content of Notice, see Appendix A (SSM XIII-3681).

Cooperation and Access to Records, see SSM XIII-3522.

Transfer of Jurisdiction and Payment of Costs, see SSM XIII-3552.

Notice of Review of Placement, see SSM XIII-3537.

Return of Child from Placement, see SSM XIII-3536.

Post-Placement Services, see SSM XIII-3565..

Pre-Adoption/Adoption XIII-3640

Pre-Adoption Procedures XIII-3641

Before taking any action on a pre-adoptive placement, the LSSA shall make and document efforts to determine:

1. if the child is an Indian child;
2. the child's tribe(s);
3. whether the child is a ward of tribal court; and
4. if the child resides or is domiciled on a reservation.

(See Jurisdictional Issues, SSM XIII-3540)

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

If the child is a ward of a tribal court, that tribe has exclusive jurisdiction over the proceeding and the LSSA may take no action on placement, unless requested to do so by the tribal court. Where the

state court has jurisdiction and the LSSA seeks to place a child for the purposes of adoption, the LSSA:

1. should use the tribal social services agency or a designated tribal representative in identifying and evaluating the suitability of potential placements;
 2. shall defer to tribal judgment as to the suitability of a particular home when the tribe has intervened pursuant to ICWA, and Minn. Stat. 257.072, subd. 7(b);
 3. shall provide the tribal social services agency with all the information it has about a child.
- The LSSA will advise prospective adoptive parents that they may have the option of filing the adoption proceedings in tribal court. The LSSA will provide the prospective adoptive parents with the name, address, and telephone number of the tribe(s) or designated tribal representative(s) for further information regarding tribal court procedures.
- Until entry of a final decree of adoption, the LSSA, in cooperation with the tribal social services agency, will regularly monitor the pre-adoptive placement for:
1. continued overall suitability;
 2. assurance that the child is not the object of abuse or neglect;
 3. assurance that the child's special needs is being addressed;
 4. assurance that the child's relationship with his/her siblings are maintained and where applicable, other members of the child's birth extended family are encouraged; and
 5. all other conditions and commitments of the placement are being met.

Placement Preference - Adoptive XIII-3642

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

1. a member of the child's extended family;
2. other members of the Indian child's tribe; or
3. other Indian families.

25 USC 1915 (a)

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

Placement Outside of Order - Good Cause, see SSM XIII-3557.

Parental and Child Preference, see SSM XIII-3558.

Record of Placement Determination XIII-3643

For every adoptive placement determination, the LSSA must prepare a detailed record:

1. describing the basis for the placement determination;
2. explaining the reasons justifying separation of the siblings if they are separated; and
3. the steps taken to maintain the sibling relationship following placement.

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

1. a detailed explanation of the good cause not follow the order of preference;
2. the efforts to find suitable placement within the order of preference (including the full names and addresses of the extended family and tribally approved homes contacted). (See General Practice Provisions, Placement Outside of Order - Good Cause, SSM XIII-3557)

Fed. Reg. Vol. 44, No. 228, Nov. 26, 1979, F. 3

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

Post-Placement Adoption Services XIII-3644

Services must be consistent with post-placement adoption services in general. If, prior to the

entry of a final decree of adoption, the LSSA is required to document its findings regarding the criteria below pursuant to Minnesota law or the request of the court, the LSSA must provide the tribe(s) with such report(s) describing and evaluating:

1. the child's adjustment;
2. the suitability of placement, and
3. the extent to which the adoptive home has carried out conditions, if any, of the placement.

The tribe(s) have the right to submit separate reports.

Post-Placement Review XIII-3645

Review must be consistent with review process for children in general.

Termination of Adoption XIII-3646

Whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody, unless the return or custody is not in the best interest of the child.

Adapted from 25 USC 1916 (a)

Notice of Termination of Adoption XIII-3647

Notice of a termination of adoption shall be given to the child's biological parent(s), or prior Indian custodian(s) and the child's tribe(s). Notice shall inform the parent(s) or Indian custodian of their right to petition for return of custody of the child.

Adapted from Fed. Reg. Vol. 44, No. 228, Nov. 26,1979, G. 3

Placement Procedure XIII-3648

Whenever an Indian child is removed from an adoptive placement, for the purpose of further out of home placement, the LSSA will place the child consistent with the placement preferences, unless the child is being returned to the parent or Indian custodian from whose custody the child was originally removed. (See General Practice Provisions, Placement Preferences, SSM XIII-3555)

Adapted from 25 USC 1916 (b)

Services to Child after Termination of Adoption XIII-3649

The LSSA, in cooperation with the tribal social services agency, will assist the child to adjust emotionally to the termination of the adoption and to any new placement, including return to the custody of the biological parent(s). This assistance will include a designated tribal representative and such other expert(s) as may be appropriate and necessary. (See General Practice Provisions, Reunification Services, SSM XIII-3563, for additional information regarding services)

Pre-Adoption/Adoption XIII-3650

Adoption Records to the Secretary of the Interior XIII-3651

Whenever a state court enters a final decree of adoption with respect to an Indian child, the LSSA must send to the Department of Human Services, the child(s) tribal social services agency, and the Secretary of the Interior a copy of the final decree of adoption along with:

1. name and tribal affiliation of the child;
2. names and addresses of biological parent(s) and adoptive parent(s);
3. identity of any agencies having files or information relating to the adoptive placement; and.

4. if any, the affidavit of biological parent(s) who request confidentiality.

25 USC 1951 (a);

Minn. Stat. 257.356, subd. 1

Death or Terminal Illness of an Adopted Child XIII-3652

The LSSA shall promptly notify the tribe(s) whenever it receives notice that an adopted Indian child has died or is terminally ill.

Minn. Stat. 259.27

Addresses for Information and Notification of Tribes XIII-3660

Minnesota Tribes XIII-3661

1. Notice When the Tribe is Known

When an agency knows the name of the Tribe, a notice can be sent directly to the tribe and other parties. The list of designated agents to receive such notices was published in the March 26, 1993 Federal Register. It is not necessary to notify the BIA in such cases unless additional tribes are involved and the exact tribe or band is not known. It is important to realize that some tribes, such as the Sioux, Chippewa, Apache and Cherokee, have numerous bands or reservations. If you do not know the exact name of the tribe and cannot find the information in the Federal Register, please follow the instructions provided in the next section.

2. Notice when the Tribe or Band is Not Known

First determine if a child is Indian. If no other information is available on the child's Indian ancestry, you must send your notice to the BIA and include all of the information specified in 25 CFR §23.11. For proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio and Wisconsin, the notices must be sent to the BIA Minneapolis Area Office (address on the attachment).

When the only information you have may be that a child is Sioux, Chippewa, or other tribes and you cannot determine the exact tribe, you will need to submit your notice to the BIA Minneapolis Area Office. For some tribes, more than one area office will need to be notified (information is on the attached). If you notify these area offices yourself, you will save time in obtaining a response to your notice.

3. General Information

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

Be sure that on any notice that all of the individuals or agencies served is clearly indicated. For example, if you send a notice to the BIA Minneapolis and Billings Area Offices, be sure the notice that goes to both parties indicates both were notified..

If you have any questions on these guidelines or if there any particular cases you would like clarification on, please contact the Minneapolis Area Office Branch of Social Services at 612/373-1184 or 373-1182.

Bois Forte Human Services
Director
13090 Westly Dr., P.O. Box 26

Nett Lake, Minnesota 55722
218-757-0111

Fond Du Lac Tribal Social Services
Director
927 Trettle Lane
Cloquet, Minnesota 55720
218-879-1227

Grand Portage Human Services
Director
P.O. Box 428
Grand Portage, Minnesota 55606
218-475-2453

Leech Lake Band of Chippewa Social Services
Director
Route 3, Box 100
Cass Lake, Minnesota 56633
218-335-8270

Mille Lacs Health and Human Services
Director
HCR 67, Box 194
Onamia, Minnesota 56359
320-532-4754

Minnesota Chippewa Tribe
Human Services
Director
P.O. Box 217
Cass Lake, Minnesota 56633-0217
218-335-8585

Red Lake Social Services
Director
P.O. Box 427
Red Lake, Minnesota 56671
218-679-2122

Lower Sioux Indian Community
Social Services
Director
P.O. Box 308
Morton, Minnesota 56270
507-697-6185

Prairie Island Family Health Department
Director
1158 Island Blvd.
Welch, Minnesota 55089
612-385-2554

Shakopee Mdewakanton Social Services
Director
2330 Sioux Trail NW
Prior Lake, Minnesota 55372
612-496-6165

Upper Sioux Tribal Social Services
Director
P.O. Box 147
Granite Falls, Minnesota 56241
320-564-4900

White Earth Tribal Social Services
Director
P.O. Box 70
Naytahwaush, Minnesota 56391
218-935-5554.

Bureau of Indian Affairs Area Offices XIII-3662

Chippewa and/or Sioux (specific reservation not known)
Area Director Area Director
Bureau of Indian Affairs Bureau of Indian Affairs
Aberdeen Area Office Billings Area Office
Attn: Social Services Attn: Social Services
115 4th Avenue, SE 316 North 26th St.
Aberdeen, SD 57041 Billings, MT 59101
Minneapolis Area Office (See address above)

Apache (specific reservation not known)
Area Director Area Director
Bureau of Indian Affairs Bureau of Indian Affairs

Albuquerque Area Office Anadarko Area office
Attn: Social Services Attn: Social Services
P.O. Box 26567 P.O. Box 368, WCD Office Complex
Albuquerque, NM 87125-6567 Anadarko, OK 73005
Area Director

Bureau of Indian Affairs
Phoenix Area Office
Attn: Social Services

P.O. Box 10
Phoenix, AZ 85001

Cherokee (send directly to tribes, not to BIA Area Offices)
Cherokee Nation of Oklahoma Principal Chief
Indian Child Welfare Director Eastern Band of Cherokee Indians of North Carolina
P.O. Box 948 Qualla Boundary
Tahlequah, OK 74465 P.O. Box 455
Cherokee, NC 28719.

Aberdeen Area Office
Bureau of Indian Affairs
115 4th Avenue, SE
Aberdeen, SD 57401
612/226-7351

Albuquerque Area Office
Bureau of Indian Affairs
P.O. Box 26567
Albuquerque, NM 87125-6567
505/766-3321-3322

Anadarko Area Office
Bureau of Indian Affairs
P.O. Box 368
WCD Office Complex
Anadarko, OK 73005
405/247-6673 ext. 257

Billings Area Office
Bureau of Indian Affairs
316 North 26th Street
Billings, MT 59101
406/657-6651

Eastern Area Office
Bureau of Indian Affairs
3701 N. Fairfax Drive
MS – 260 Virginia Square Plaza
Arlington, VA 22203
703/235-2353

Juneau Area Office
Bureau of Indian Affairs
P.O. Box 25520
Juneau, AK 99802-5520

907/586-7628

Minneapolis Area Office
Bureau of Indian Affairs
Bishop Henry Whipple Building
1 Federal Drive, Room 550
Fort Snelling, MN 55111-4007
612/713-4400

Muskogee Area Office
Bureau of Indian Affairs
Federal Courthouse Building
101 North 5th Street
Muskogee, OK 74401-6206
918-687-2507

Navajo Area Office
Bureau of Indian Affairs
P.O. Box 1060
MC-400
Gallup, NM 87301
602/871-5151

Phoenix Area Office
Bureau of Indian Affairs
1 North First Street
P.O. Box 10
Phoenix, AZ 85001
602/379-6785

Portland Area Office
Bureau of Indian Affairs
911 NE 11th Avenue
Portland, OR 97232-4149
503/231-6783/6785

Sacramento Area Office
Bureau of Indian Affairs
Federal Office Building
2800 Cottage Way
Sacramento, CA 95825
916/978-4705.

Forms XIII-3670

Following are DHS forms or models and they may be reproduced or revised as necessary:
Data Practices Agreement-Indian Social Services (SSIS 43) (See SSM XIII-3671)

ICWA Child Welfare Placement Preference and Considerations Documentation (SSIS44)
(See SSM XIII-3672) **Notice to Parent Considering Voluntary Placement of an Indian Child (SSIS 37)** (See XIII-3673)

Notice to Tribe of Services to an Indian Child (SSIS 45) (See SSM XIII-3674)

Request for Return of an Indian Child (SSIS 46) (See SSM XIII-3675)

ICWA/MIFPA Social Worker Checklist (SSIS 42) (See SSM XIII-3676)

Voluntary Out-of-Home Placement Agreement Consent – Indian Child (DHS 3374) (SSIS 38) (See SSM XIII-3677)

Appendices XIII-3680

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

Appendix A

Content of Notice in an Involuntary Placement (See SSM XIII-3681)

Appendix B

Content of Voluntary Out of Home Placement Consent (See SSM XIII-3682)

Appendix C

Content of an Affidavit for Emergency Placement Which Extends Beyond 72 Hours (See SSM XIII-3683)

Appendix D

Content of Petition for the Involuntary Out of Home Placement of Indian Children (See SSM XIII-3684)

Appendix E

Content of Consent Document for Voluntary Relinquishing of Parental Rights (See SSM XIII-3685)

Appendix F

Content of Petition for Voluntary Relinquishing of Parental Rights (See SSM XIII-3686)

Appendix G

Content of Petition for Involuntary Termination of Parental Rights of an Indian Child (See SSM XIII-3687).

APPENDIX A

Content of Notice in an Involuntary Placement XIII-3681

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

1. the name of the Indian child;
2. his or her tribal affiliation;
3. a copy of the petition, complaint or other document by which the proceeding was initiated;
4. the name of the petitioner and the name and address of the petitioner's attorney;
5. a statement of the right of the biological parent(s) or Indian custodian(s) and the child's tribe to intervene in the proceeding;
6. a statement that if the parent(s) or Indian custodian(s) are unable to afford counsel, counsel will be appointed to represent them;
7. a statement of the right of the natural parent(s) or Indian custodian(s) and the Indian child's tribe to have, on request, twenty days or such additional time as may be permitted under state law to prepare for the proceedings;
8. the location, mailing address and telephone number of the court;

9. a statement of the right of the parent(s) or Indian custodian(s) or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court;

10. the potential legal consequences of an adjudication on future custodial rights of the parent(s) or Indian custodian(s); and

11. a statement in the notice to the tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the ICWA.

Fed. Reg. Vol. 44, No. 228, Nov. 26, 1979, B. 5

12. location, telephone number and name, if known, of the judge or referee of the court which will hear the consent.

Adapted from Fed. Reg. Vol. 44, No. 228, Nov. 26, 1979, E.2.

APPENDIX B

Content of Voluntary Out of Home Placement Consent XIII-3682

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

1. the child's full name and date of birth;

2. tribes with which the Indian child is eligible for membership or has membership;

3. full names, birth dates, and addresses of the child's parent(s) or Indian custodian;

4. tribal affiliation(s) of the biological parent(s) and/or Indian custodian(s); if the tribal affiliation has not been determined, a statement to that effect shall be included;

5. a statement whether the Indian child's residence or domicile is on the reservation;

6. a statement that the Indian child is not a ward of any tribal court;

7. a statement affirming that the consent was not given prior to or within ten days after a child's birth;

8. a. a statement acknowledging the understanding by the parent(s) or Indian custodian(s); of the right to services to prevent placement of the child;

b. the description of active efforts that have been made by the agency to prevent placement;

c. that the consent or order to be valid, must be approved in a court proceeding at which the parent(s) or Indian custodian(s) personally appear;

d. the right to withdraw consent to the voluntary out of home placement and to have the child returned within 24 hours after receipt of a written and notarized demand for return filed with the juvenile court. This return must be made unless a petition has been filed with the court alleging that the return would not be in the best interest of the child; and

e. that a copy of the consent is to be sent to the tribe and that the parent(s) or Indian custodian(s) has been advised of the provisions of ICWA governing voluntary foster placement;

9. the name of the LSSA involved in the preparation of the consent and the date the consent was prepared;

10. name and address of the placement, if known at the time;

11. date and time of the hearing to obtain court validation of the consent, if known; and.

12. location, telephone number and name, if known, of the judge or referee of the court which will hear the consent.

Adapted from Fed. Reg. Vol. 44, No. 228, Nov. 26, 1979, E. 2.

APPENDIX C

Content of an Affidavit for Emergency Placement Which Extends Beyond XIII-3683

72 Hours

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

1. the names, age and last known address of the Indian child;
2. the name and address of the child's parent(s) and Indian custodian(s), if any. If such persons are unknown, a detailed explanation of what efforts have been made to locate them shall be included;
3. facts necessary to determine the residence and the domicile of the Indian child and whether either the residence or domicile is on an Indian reservation. If either the residence or domicile is believed to be on a reservation, the name of the reservation shall be stated;
4. the tribal affiliation of the child and of the parent(s) and/or Indian custodian(s);
5. the specific and detailed account of the circumstances that lead the agency responsible for the emergency removal of the child to take that action;
6. if the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made to transfer the child to the tribe's jurisdiction; and
7. a statement of the specific actions that have been taken to assist the parent(s) or Indian custodian(s) so the child may safely be returned to their custody.

Adapted from Fed. Reg., Vol. 44, No. 228., Nov. 26, 1979, B. 7 (b).

APPENDIX D

Content of Petition for the Involuntary Out of Home Placement of XIII-3684

Indian Children

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

1. the full name, birth date, and address of the home from which the Indian child was removed;
2. tribal affiliation(s) of the Indian child. If the child's tribe(s) is not known, a statement of what information is known that could lead to identification of the child's tribe(s). Information must be provided for all tribe(s) with which the child may be eligible for membership;
3. the full names, maiden names, a.k.a.'s, and addresses of the child's parent(s) or Indian custodian(s), if known. If the whereabouts of persons are unknown, a detailed explanation shall be included of the efforts made to locate them;
4. the tribal affiliation(s) of the parent(s) and/or Indian custodian(s);
5. a statement as to whether the Indian child's residence or domicile is on a tribe(s)' reservation;
6. a specific and detailed account of the circumstances that led the LSSA to petition the state court which specifies the circumstances, which put the child in danger or serious emotional or physical damage and with the direct cause and effect, clearly stated;

7. a statement of the specific active efforts made by the LSSA (excluding emergency situations) to provide services designed to prevent the break-up of the Indian family. These efforts must relate to the circumstances described above in number 6. The statement shall also state whether these efforts were unsuccessful and the reasons for any lack of success; and
8. the names, address and telephone number of the petitioner..

APPENDIX E

Content of Consent Document for Voluntary Relinquishing of Parental Rights XIII-3685

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

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

APPENDIX F

Content of Petition for Voluntary Relinquishing of Parental Rights XIII-3686

The content of a petition for voluntary relinquishment of parental rights of an Indian child filed pursuant to Minn. Stat. 260.231, subd. 1, and 260.131, subd. 2 and 3, shall include:

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

APPENDIX G

Content of Petition for Involuntary Termination of Parental Rights of an Indian Child XIII-3687

The content of a petition for involuntary termination of parental rights of an Indian child, filed pursuant to Minn. Stat. 260.231, subd. 1, and 260.231, subd. 2 and 3, shall include:

1. full name, birthdate, and last known address of the child;
2. full name, birthdate and last known address of the parent(s) or Indian custodian(s). Include maiden names, married names, and names of parent(s) who are deceased, if known;
3. all tribes with which the Indian child is eligible for membership or has membership. If the Indian child's tribe is not known, a statement of what information is known that could lead to identification of the child's tribe;
4. the tribal affiliation(s) of all parent(s) and/or Indian custodian(s). If the tribal affiliation has not been determined, a statement to that effect shall be included;
5. a statement as to whether the Indian child's residence or domicile is on the reservation. If there is insufficient information available, a statement to that effect shall be included;
6. a statement that the Indian child is not a ward of any tribal court. If there is insufficient information available to determine tribal wardship status of the child, a statement to that effect shall be included;

7. a specific and detailed account of the grounds for termination;
8. a statement, with documentation, of the specific active efforts made by the LSSA to provide remedial and rehabilitative services designed to prevent the break up of the Indian family;
9. a description of all alternative dispositions which were explored as preferable to termination;
10. a description of the long term plan for permanency and the justification of how the child will be better off after termination; and
11. a statement that no termination of parental rights may be ordered in a proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified witnesses, that the continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child.