

CHAPTER 35
INDIAN CHILD WELFARE ACT (ICWA)
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WHAT JUDGES SHOULD KNOW BEFORE PRESIDING OVER AN INDIAN CHILD WELFARE ACT (ICWA) CASE

The Indian Child Welfare Act (ICWA) was passed in 1978.¹ Its passage was a congressional response to the high number of Indian children who were removed from their families and tribes by non-tribal public and private agencies, and placed in non-Indian foster homes or made available for non-Indian adoption.² The placements in non-Indian homes resulted in a separation of Indian children from their culture, which led to serious adjustment problems as they grew up in a white culture that did not acknowledge their Indian heritage.

One of the most serious failings of the child protection system was the removal of Indian children from the custody of their natural parents by non-tribal government authorities who had no basis for intelligently evaluating the cultural and social premises underlying Indian home life and childrearing³ and, therefore, no understanding of how the Indian extended family can play a critical role in the life of an Indian child.

Both the congressional hearings that resulted in the passage of the ICWA and the subsequent court cases that interpreted the ICWA noted the serious impact that removal of Indian children has on tribes. The very survival of Indian and tribal culture is significantly impaired when Indian children are removed from their families.⁴

The cornerstone of the ICWA is its recognition of the importance of tribal integrity, the cultural and social standards of the tribal community, and the concept of extended family in Indian society. Recognition of these principals resulted in the ICWA jurisdictional and procedural requirements that must be followed in any state court proceeding where the result may be the removal of an Indian child from his or her home and the parent or Indian custodian cannot have the child returned upon demand. In most cases, these will be child protection and permanency proceedings, but it also includes status offenses.⁵

Please note that the ICWA must be read in conjunction with other applicable state or federal laws. Generally, the ICWA procedures must always be followed unless other state or federal law provides a higher standard of protection for the Indian child, parent, or Indian custodian.⁶

One of the best general summaries of this law is found in *Mississippi Band of Choctaw Indians v. Holyfield*,⁷ the only ICWA case heard by the United States Supreme Court to date. The following are excerpts from that opinion:

At the heart of the ICWA are its provisions concerning jurisdiction over Indian child custody proceedings. Section 1911 lays out a dual jurisdiction in the tribal courts for proceedings concerning an Indian child "who resides or is domiciled within the reservation of such tribe," as well as wards of tribal courts regardless of domicile. Section 1911(b), on the other hand creates concurrent but presumptively tribal jurisdiction in the case of children not domiciled on the reservation: on petition of either parent or the tribe, state-court proceedings for foster care placement or termination of parental rights are to be transferred to the tribal court, except in cases of "good cause," objection by either parent, or declination of jurisdiction by the tribal court.

Various other provisions of the ICWA Title 1 set procedural and substantive standards for those child custody proceedings that do take place in state court. The procedural

¹ 25 U.S.C. §§ 1901-1963.

² *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 130 (1989).

³ *Id.* at 34, quoting Hearings on S. 1214 before the Subcommittee on Indian Affairs and Public Affairs of the House Committee on Interior and Insular Affairs, 95th Cong., 2d Sess. 191-192 (1978).

⁴ *Id.* at 34, quoting Hearings on S. 1214 before the Subcommittee on Indian Affairs and Public Affairs of the House Committee on Interior and Insular Affairs, 95th Cong., 2d Sess. (1978).

⁵ M.S.A. 260.755, subd. 3 (2003).

⁶ 25 U.S.C. § 1921. See also *Guidelines for State Courts*, Bureau of Indian Affairs, U.S. Dept. of the Interior, 44 Fed. Reg. 67584-67595 (1979).

⁷ 490 U.S. 30 (1989).

safeguards include requirements concerning notice and appointment of counsel; parental and tribal rights of intervention and petition for invalidation of illegal proceedings; procedures governing voluntary consent to termination of parental rights; and a full faith and credit obligation in respect to tribal court decisions. See §§ 1901-1914. The most important substantive requirements imposed on state courts is that of § 1915(a), which, absent “good cause” to the contrary, mandates that adoptive placements be made preferentially with (1) members of the child’s extended family, (2) other members of the same tribe, or (3) other Indian families.

The ICWA thus, in the words of the House Report accompanying it, “seeks to protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society.” It does so by establishing “a Federal policy that, where possible, an Indian child should remain in the Indian community,” and by making sure that Indian child welfare determinations are not based on “a white, middle-class standard which, in many cases, forecloses placement with [an] Indian family.”⁸

The reality of out-of-home placements of Indian children and their adoptions was memorialized in Congressional hearings that went on for four years prior to the passage of the Act. The Congressional record graphically demonstrated that adoption and foster care rates in some states were 19 times greater and ten times greater, respectively, than non-Indian populations. The figures in Minnesota recorded that one in every eight Indian children was in an adoptive home and one in every four Indian children under one year of age was adopted.⁹ In many areas of the country, including Minnesota, there has been no dramatic reduction of those rates in adoption and foster care of Indian children.¹⁰ As noted, the ICWA recognized the fundamental importance of tribal integrity, cultural and social standards, and the place of extended family in Indian societies. If best efforts are made to comply with the ICWA at every step to try to help an Indian child and family, the child’s sense of belonging – his or her best interests – will be protected. But this can only happen if proper attention is paid to the values, beliefs, and practices of the child’s Tribe. Those values, beliefs, and practices have for centuries been, and still are, the basis of each Tribe’s survival.

The ICWA provides a means to protect an Indian child’s best interests – his or her sense of belonging – by requiring that *active efforts* are used throughout child placement proceedings from the identification of an Indian child’s Tribe at the very outset of a proceeding to the information that is provided by a *qualified expert witness*. The effort required to execute active efforts at times appears to conflict with the general intent and requirements of the Adoption and Safe Families Act (ASFA),¹¹ which is intended to ensure that children timely achieve a safe, stable, permanent home. It should be noted, however, that the ASFA itself recognizes that it does not supersede the requirements of the ICWA and, if the ICWA proceedings are carried out properly, a solution that takes longer to solve the family’s difficulties is not *per se* a detriment to the welfare of an Indian child because it is family and tribally centered.

This Chapter provides guidance to judges in proceedings involving Indian children and attempts to give judges every means to allow them to follow the ICWA and the Minnesota Indian Family Preservation Act (MIFPA)¹² efficiently and thoroughly. The Chapter also notes elements of the MIFPA that are different from the ICWA and attempts to guide its proper application in the context of ICWA proceedings.

⁸ Id. at 36-37 (citations omitted).

⁹ William Byler, Association of American Indian Affairs, 1974 Senate Subcommittee on Indian Affairs.

¹⁰ More recently, U.S. Census data indicates that American Indian children makeup approximately 25 children per 1,000 of the total child population in Minnesota. Statistically, American Indian children should comprise 25 per 1,000 of the total child protection population if there is no disparity. However, a 2003 report issued by the Minnesota Department of Human Services (DHS) established disproportional representation of American Indian children in the child protection system. Specifically, 60% of American Indian children were involved in the child protection system, while only 12% of white children were in the child protection system throughout the state. In looking at the metro area, 79.6% of American Indian children were in the child protection system and 10.9% of white children in the “metro counties” were in the child protection system. This number does not reflect the number of children in the out of home placement. In short, American Indian children were five times more likely to enter into the child protection system for every one white child. *American Indian Disparity in Child Protective Services in 2000*, Minnesota Department of Human Services (September 3, 2002).

¹¹ P.L. 105-89 (1997).

¹² Minn. Stat. § 260.751–835. (2006)

ICWA AND ASFA

The Indian Child Welfare Act (ICWA) and the Adoption and Safe Families Act (ASFA) are equal and compatible federal laws. Implementing both laws is a challenge for the courts and county child welfare agencies and is in the best interests of Indian children. State Courts and Tribal Courts that are affected by ASFA must comply with both statutes. All Minnesota counties and Minnesota tribes who receive IV-E dollars must meet the requirements of both federal laws.

TRIBAL / STATE AGREEMENT

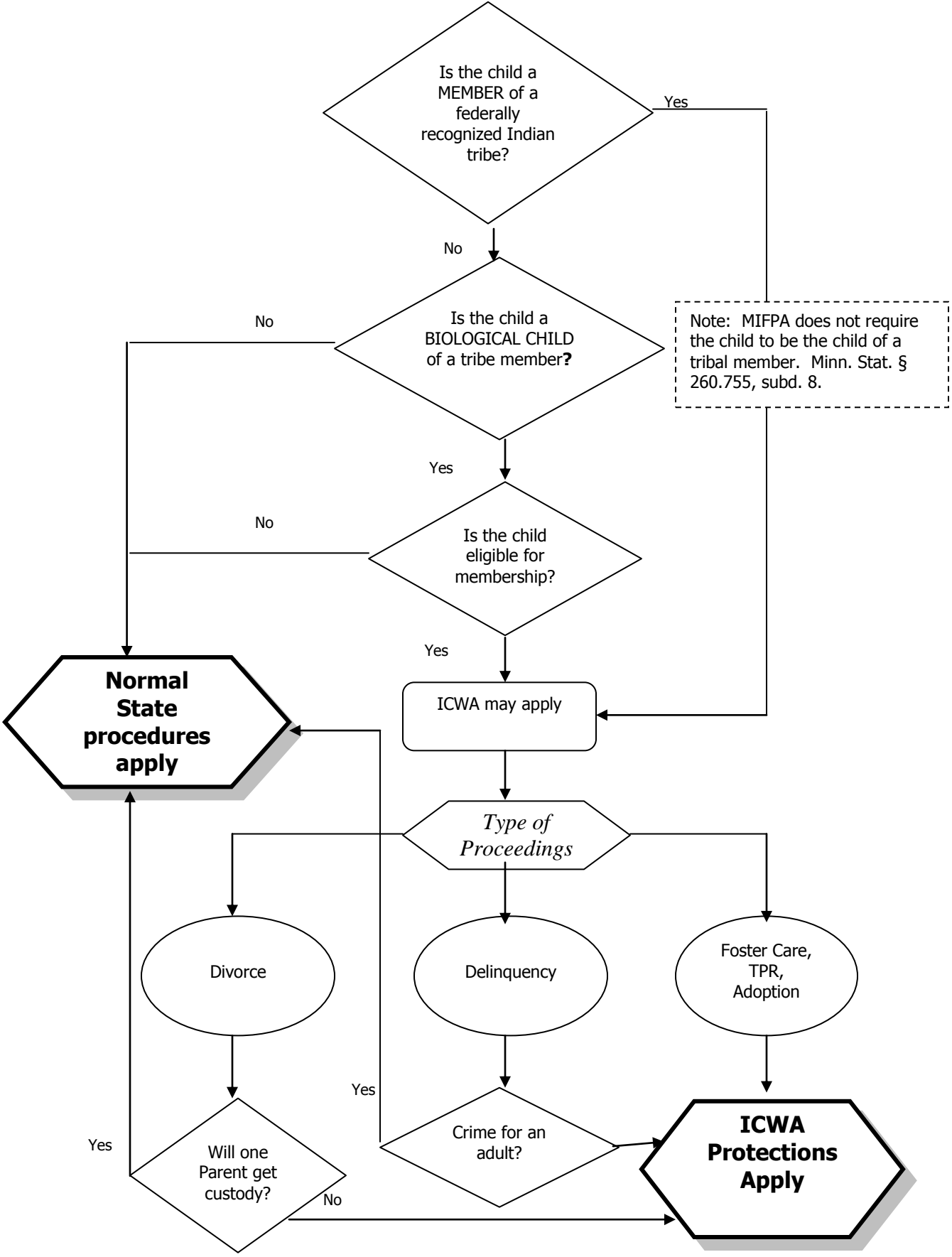
Appendix B to this Chapter is the Tribal / State Agreement ("Agreement") dated February 22, 2007. The Agreement is included in the Benchbook to provide guidance to Courts. The Introduction to the Agreement states its purpose as follows:

This Agreement is intended to coordinate the abilities and to maximize the guidance, resources and participation of tribes in order to remove barriers from the process that impede the proper care of Indian children. 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 each of the eleven tribes located within the geographical bounds of the State of Minnesota and the Minnesota Department of Human Services for the delivery of child welfare services.

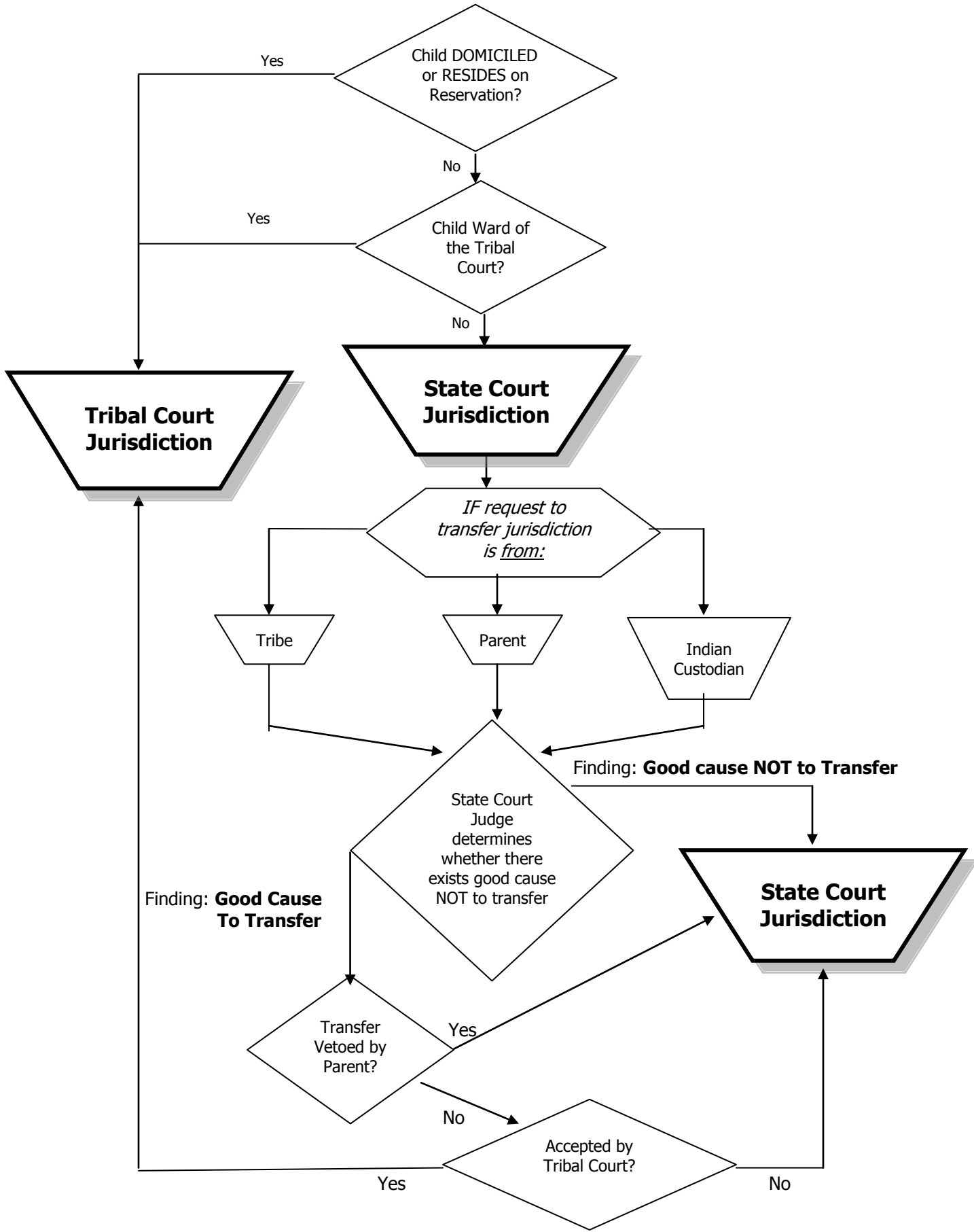
This Agreement states the policies and procedures agreed to by both the tribes and the State and specifies the roles and duties of each in the implementation of child welfare services to Indian families and children. It is the intent of the parties to this Agreement, the Minnesota Department of Human Services and each of the eleven tribes located within the geographical bounds of the State of Minnesota, that this Agreement applies to all Indian children in Minnesota, regardless of whether the child's Tribe, Band or Nation executed this Agreement, as all Indian children subject to any child custody proceeding are guaranteed the protections set forth in the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act. The State agrees to apply the protections of the Agreement to *a//* Indian children in Minnesota who are covered by the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

The purpose of this Agreement is to protect the long term best interests, as defined by the tribes, of Indian children and their families, by maintaining the integrity of the Tribal family, extended family and the child's Tribal relationship. The best interests of Indian children are inherently tied to the concept of belonging. Belonging can only be realized for Indian children by recognition of the values and ways of life of the child's Tribe and support of the strengths inherent in the social and cultural standards of tribal family systems. Family preservation shall be the intended purpose and outcome of these efforts.

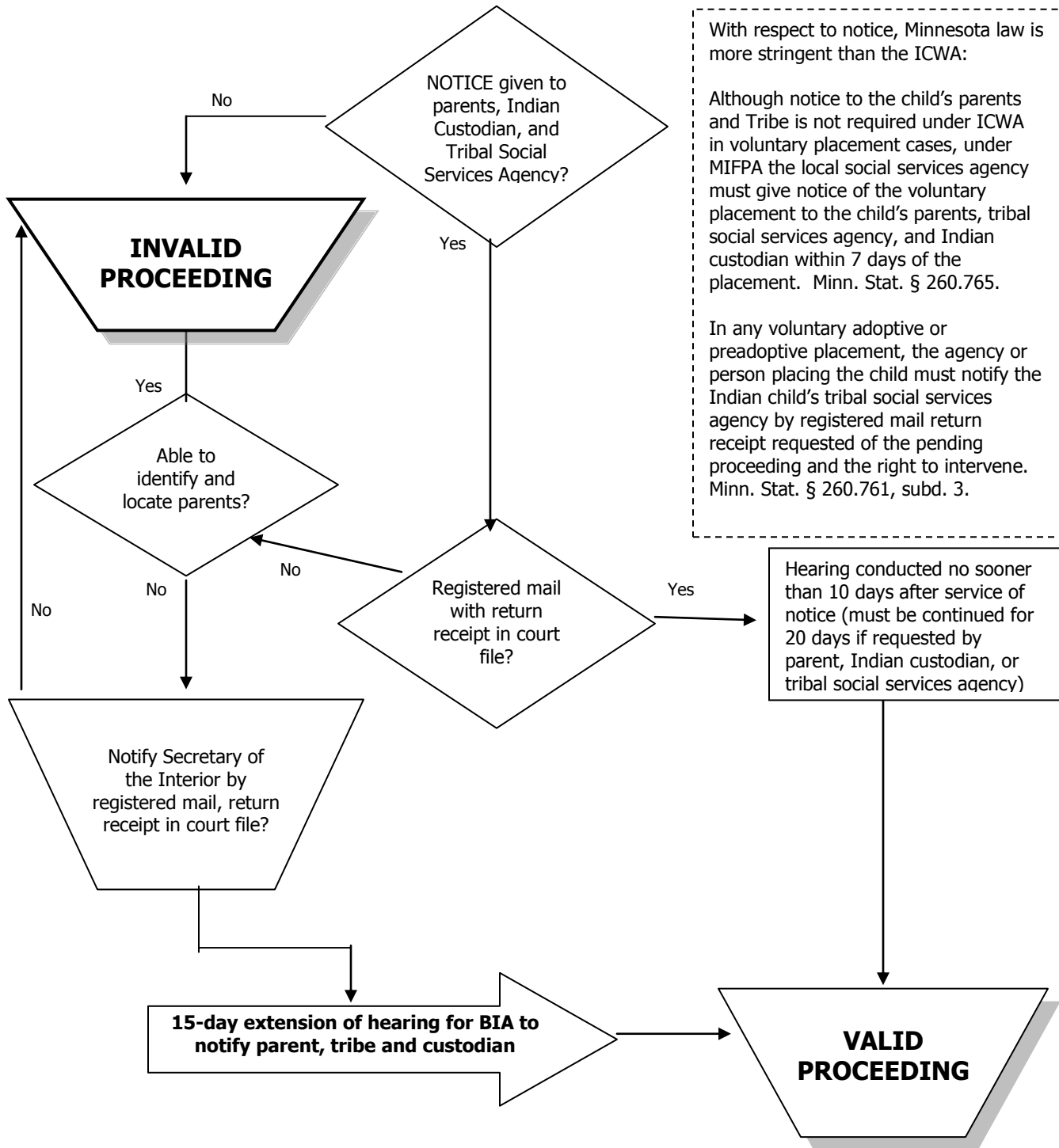
WILL THE ICWA APPLY TO THIS CASE?



ICWA AND TRIBAL COURT OR STATE COURT JURISDICTION (ICWA § 1911)



NOTICE REQUIREMENTS IN ICWA PROCEEDINGS (ICWA § 1912)



With respect to notice, Minnesota law is more stringent than the ICWA:

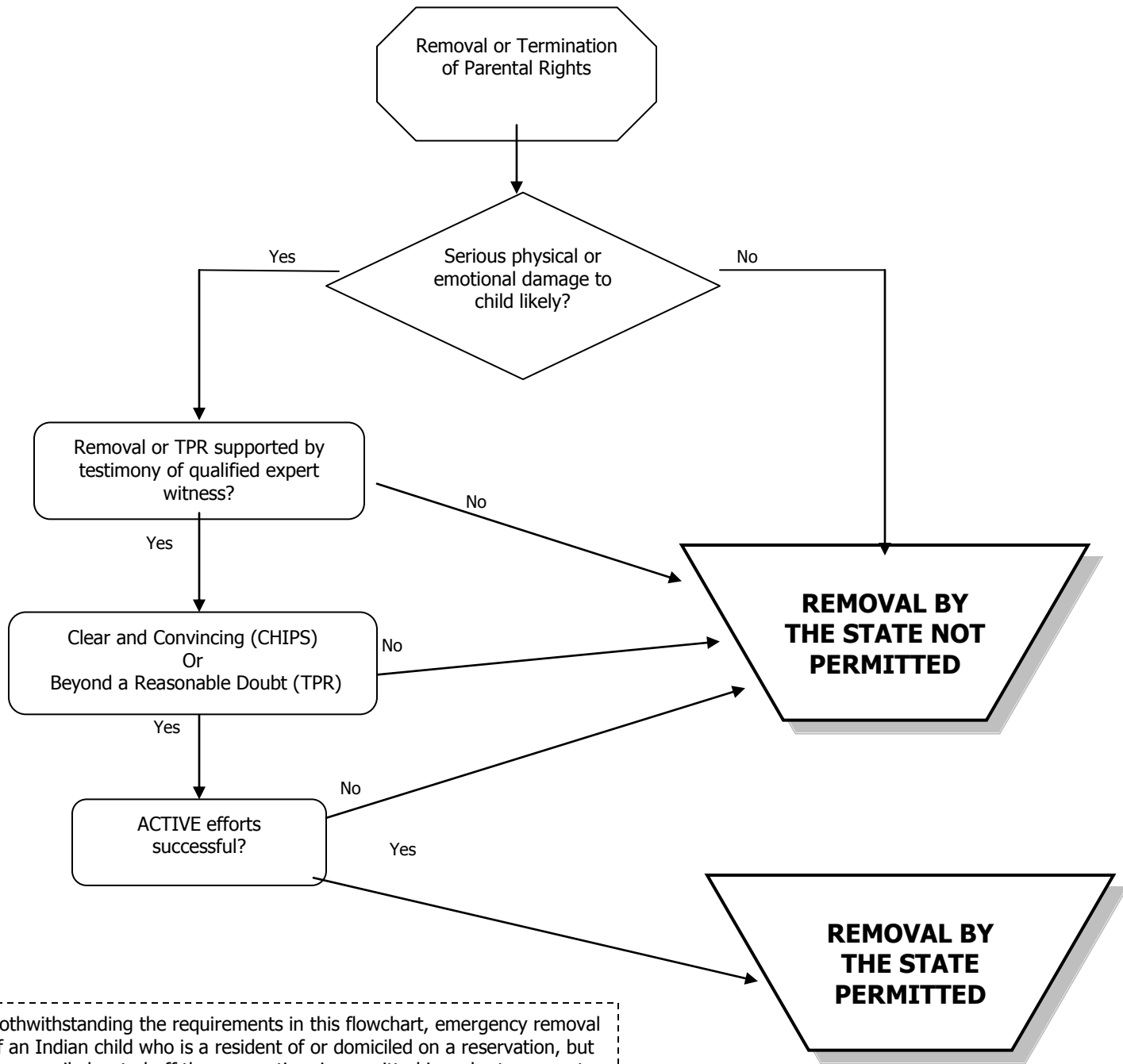
Although notice to the child's parents and Tribe is not required under ICWA in voluntary placement cases, under MIFPA the local social services agency must give notice of the voluntary placement to the child's parents, tribal social services agency, and Indian custodian within 7 days of the placement. Minn. Stat. § 260.765.

In any voluntary adoptive or preadoptive placement, the agency or person placing the child must notify the Indian child's tribal social services agency by registered mail return receipt requested of the pending proceeding and the right to intervene. Minn. Stat. § 260.761, subd. 3.

Hearing conducted no sooner than 10 days after service of notice (must be continued for 20 days if requested by parent, Indian custodian, or tribal social services agency)

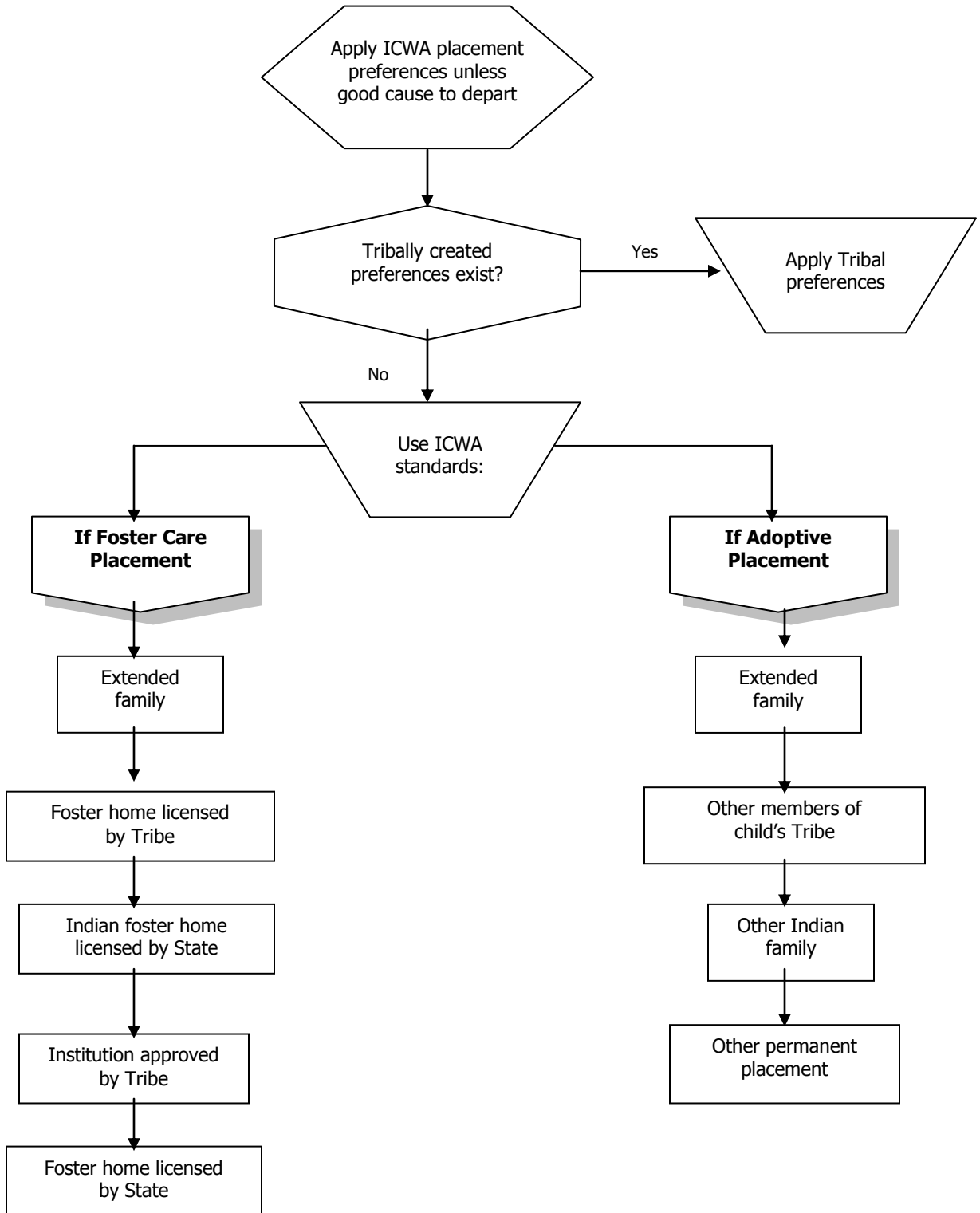
15-day extension of hearing for BIA to notify parent, tribe and custodian

**CHECKLIST FOR REMOVAL (ICWA § 1912(E)) OR
TERMINATION OF PARENTAL RIGHTS (ICWA § 1912(F))**

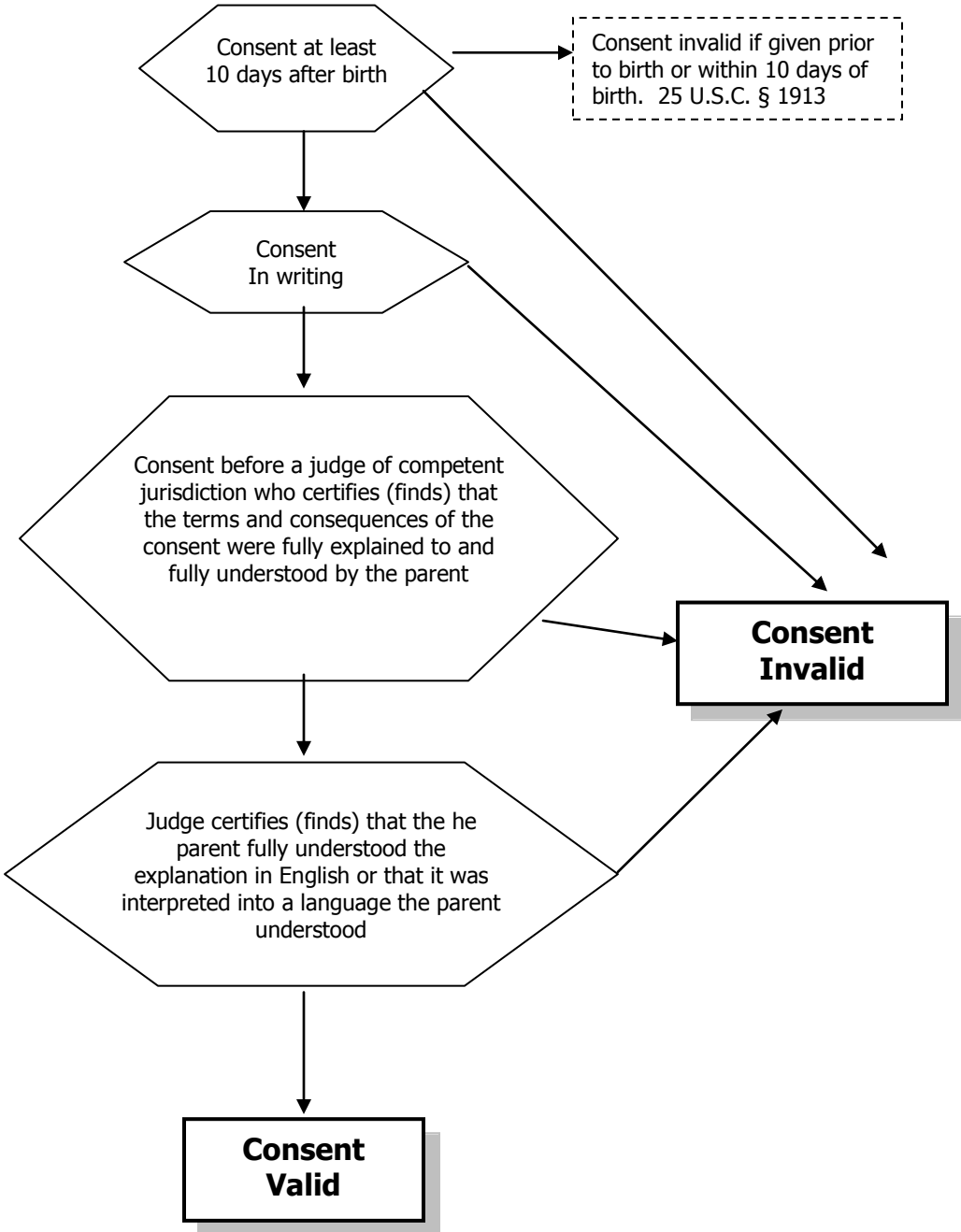


Notwithstanding the requirements in this flowchart, emergency removal of an Indian child who is a resident of or domiciled on a reservation, but temporarily located off the reservation, is permitted in order to prevent imminent physical damage or harm to the child. However, the state authority, official, or agency involved must insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously return the child to the parent, initiate a child custody proceeding, or transfer jurisdiction to the tribe as may be appropriate. 25 U.S.C. § 1922

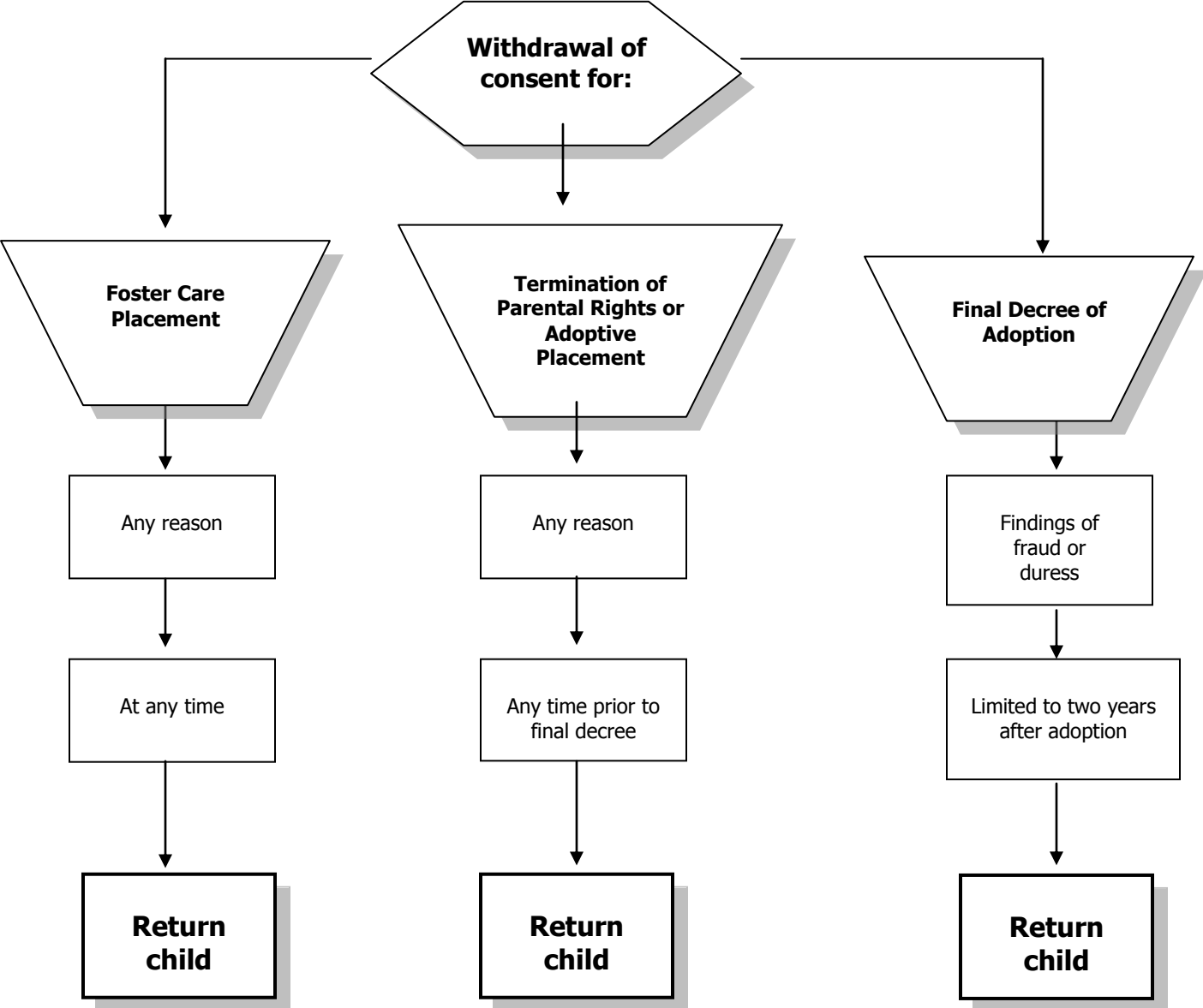
PLACEMENT PREFERENCES (ICWA § 1915)



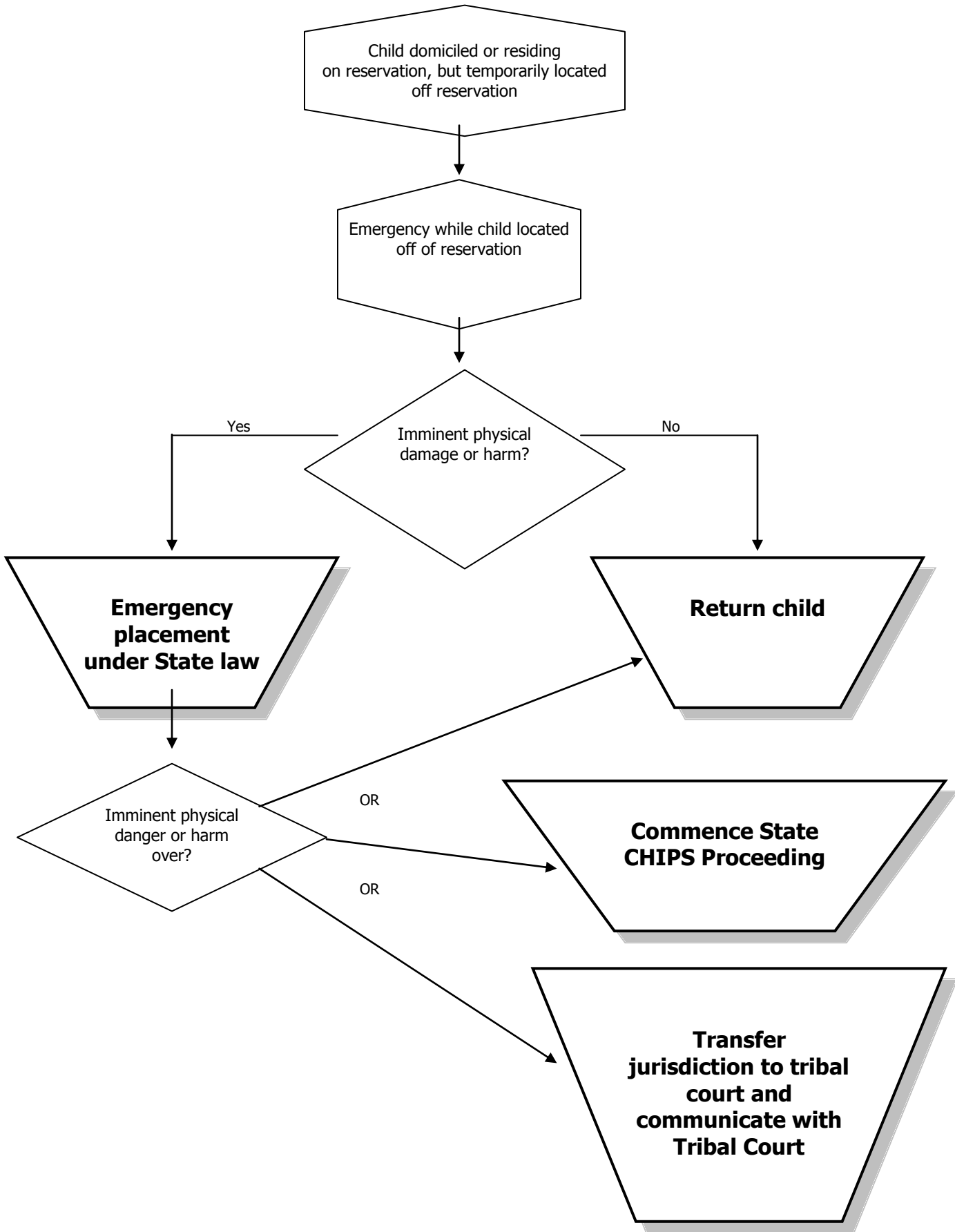
**VOLUNTARY CONSENT TO FOSTER CARE PLACEMENT OR
TERMINATION OF PARENTAL RIGHTS (TPR) (ICWA § 1913(A))**



WITHDRAWAL OF VOLUNTARY CONSENT TO FOSTER CARE PLACEMENT, TERMINATION OF PARENTAL RIGHTS (TPR), OR ADOPTIVE PLACEMENT (ICWA § 1913(B), (C), (D))



EMERGENCY REMOVAL (ICWA § 1922)



WHEN DOES THE INDIAN CHILD WELFARE ACT APPLY?

	PROCEDURE	AUTHORITY
34.01	<p>GENERALLY Substantive differences between the Indian Child Welfare Act (ICWA) and the Minnesota Indian Family Preservation Act (MIFPA) are noted within each section, with a reference to the <i>Comment</i> section for clarification.</p>	<ul style="list-style-type: none"> • 25 U.S.C. §§ 1901-1963 • Minn. Stat. § 260.751- 835
34.02	<p>THE INDIAN CHILD WELFARE ACT APPLIES WHEN 1. The child is an “Indian child” (defined in section 34.03); <u>and</u> 2. The proceedings are “child custody proceedings” (defined in section 34.04). If the child does not meet the definition of an “Indian child,” or the proceedings do not meet the definition of “child custody proceedings,” then the ICWA does not apply.</p>	25 U.S.C. §§ 1901-1963
34.03	<p>DEFINITION OF “INDIAN CHILD” A. THE CHILD IS AN “INDIAN CHILD” UNDER THE ICWA IF: 1. The child is an unmarried person who is under the age of 18, <u>and</u> 2. The child is a member of an Indian tribe, <u>or</u> 3. The child is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. B. THE CHILD IS AN “INDIAN CHILD” UNDER THE MIFPA IF: 1. The child is an unmarried person who is under the age of 18, <u>and</u> 2. The child is a member of an Indian tribe, <u>or</u> 3. The child is eligible for membership in an Indian tribe. <i>Comment:</i> Under the MIFPA, Minnesota has chosen to expand the definition of “Indian child” to include a child who is eligible for membership in an Indian tribe even though the child’s biological parent may not be a member of an Indian tribe. <i>Best Practice:</i> To ensure timely compliance with the ICWA and the MIFPA, at the beginning of the proceedings the judge should always determine whether the child is an Indian child. If the child’s status is not clear, or if there is reason to believe that the child is Indian, then the protections afforded to an Indian child should be applied until such time that a determination regarding the child’s status is made to the contrary.</p> <p>C. EVIDENCE OF MEMBERSHIP IN AN INDIAN TRIBE. A determination by the tribe that a child is a member or eligible for membership in the tribe is conclusive. The Tribe’s determination regarding the child’s status as an “Indian child” can be provided to the Court through oral testimony, written statement, affidavit, or resolution, or other format. Each Tribe has its own unique means by which it determines this issue, and its own unique means by which this information is conveyed to State Courts for purposes of application of the ICWA.</p>	<p>25 U.S.C. § 1903(4)</p> <p>Minn. Stat. § 260.755, subd. 8</p> <ul style="list-style-type: none"> • BIA Guidelines , 44 Fed. Reg. No. 228, p. 67,584, 67,586 (Nov. 26, 1979) • <i>In re S.N.R.</i>, 617 N.W.2d 77, 84 (Minn. Ct. App. 2000) (determination of

WHEN DOES THE INDIAN CHILD WELFARE ACT APPLY?

	PROCEDURE	AUTHORITY
	<p>34.03 Definition of Indian Child (Continued)</p> <p>D. EXISTING INDIAN FAMILY DOCTRINE INAPPLICABLE TO DETERMINATION OF</p> <p>APPLICABILITY OF ICWA. A court shall not determine the applicability of the MIFPA or the federal Indian Child Welfare Act to a child custody proceeding based upon whether an Indian child is part of an existing Indian family or based upon the level of contact a child has with the child's Indian tribe, reservation, society, or off-reservation community.</p> <p><i>Comment: Membership or eligibility for membership is not necessarily the same thing as enrollment or eligibility for enrollment. Each tribe solely determines the requirements for membership and enrollment. A Tribe may determine that a child is a member of the Tribe for ICWA purposes.</i></p>	<p>whether a child is a member of or eligible for membership in a tribe)</p> <p>Minn. Stat. § 260.771, subd. 2</p>
34.04	<p>DEFINITION OF "CHILD CUSTODY PROCEEDINGS" UNDER THE ICWA OR "CHILD PLACEMENT PROCEEDINGS" UNDER THE MIFPA</p> <p>A. NOT "CHILD CUSTODY PROCEEDINGS" UNDER THE ICWA OR "CHILD PLACEMENT PROCEEDINGS" UNDER THE MIFPA</p> <ol style="list-style-type: none"> 1. Custody under divorce. An award of custody pursuant to a divorce where one of the parents will obtain custody of the child. 2. Delinquency placement. A placement based upon an act which, if committed by an adult, would be deemed a crime. <p>B. "CHILD CUSTODY PROCEEDINGS" UNDER THE ICWA OR "CHILD PLACEMENT PROCEEDINGS" UNDER THE MIFPA</p> <ol style="list-style-type: none"> 1. Foster care placements. This includes any action where a child is removed from its parent(s) or Indian custodian(s) for temporary placement in a foster home or institution, including the home of a guardian or conservator, where the parent(s) or Indian custodian(s) cannot have the child returned upon demand, but where parental rights have not been terminated. 2. Termination of parental rights. Any action resulting in the termination of the parent-child relationship. 3. Preadoptive placements. The temporary placement of an Indian child in a foster home or institution and after the termination of parental rights, but prior to or in lieu of adoptive placement. 	<ul style="list-style-type: none"> • 25 U.S.C. § 1903(1)(iv) • Minn. Stat. § 260.755, subd. 3 <ul style="list-style-type: none"> • 25 U.S.C. § 1903(1)(i) • Minn. Stat. § 260.755, subd. 3(b) <ul style="list-style-type: none"> • 25 U.S.C. § 1903(1)(ii) • Minn. Stat. § 260.755, subd. 3(d) <ul style="list-style-type: none"> • 25 U.S.C. § 1903(1)(iv) • Minn. Stat. § 260.755, subd. 3(a)

WHEN DOES THE INDIAN CHILD WELFARE ACT APPLY?

	PROCEDURE	AUTHORITY
	<p>34.04 Definition of “Child Custody” or “Child Placement” Proceeding (continued)</p> <p>4. Adoptive placements. The permanent placement of an Indian child for adoption, including any action resulting in a final decree.</p> <p><i>Comment: In its Child Welfare Policy Manual, the federal Department of Health and Human Services, Administration for Children and Families, acknowledges that a Tribe’s traditional and/or customary adoptions, without termination of parental rights, are an acceptable permanency option.</i></p> <p>5. Third party custody proceedings. In <i>In re A.K.H.</i>, the Court held that the Tribe had a statutory right to intervene in a child custody dispute between parents and grandmother. Placement with grandmother would be a placement in the home of a “guardian or conservator” and, therefore, a foster care placement under 25 U.S.C. § 1903(1)(i). But, in <i>Gerber v. Eastman</i> the Court held that where a parent petitions for return of a child from grandparent legal custodian, ICWA does not apply as the child would not be placed into a “foster care” placement.</p> <p>6. Juvenile status offenses. The MIFPA clarifies that status offenses are subject to the protections of the ICWA. Neither Minnesota Statutes chapters 260B or 260C define status offenses but, traditionally, status offenses include minor tobacco or alcohol consumption, and curfew violations.</p>	<ul style="list-style-type: none"> • 25 U.S.C. § 1903(1)(iv) • Minn. Stat. § 260.755, subd. 3(a) • <i>Child Welfare Policy Manual</i>, 9.2 <p>Tribes/Indian Tribal Organizations, Admin. for Children and Families (May 4,2004)</p> <p><i>In re A.K.H.</i>, 502 N.W.2d 790 (Minn. Ct. App. 1993) <i>review denied</i> (Minn. Aug. 24, 1993)</p> <p><i>Gerber v. Eastman</i> 673 N.W.2d 854 (Minn. Ct. App. 2004)</p> <p>Minn. Stat. § 260.755, subd. 3</p>

PROCEDURES APPLICABLE TO ALL ICWA HEARINGS

	PROCEDURE	AUTHORITY
	<i>social services agency make such contact in person, by phone, fax, email, or another efficient method even before the petition is filed.</i>	
34.06	<p>PERSONS WHO MUST BE INFORMED OF ALL HEARINGS REGARDLESS OF AGENCY OR PRIVATE PETITION</p> <p>The court administrator must serve a Summons or Notice of Hearing for all hearings (except the EPC Hearing) upon the following parties, participants, and attorneys:</p> <ol style="list-style-type: none"> Indian Tribe Tribal representative(s) Attorney for child’s Indian tribe Indian child Attorney for the Indian child Parents whose rights have not been terminated, including any alleged, adjudicated, presumed, or putative father who has acknowledged paternity, even if he has not legally established paternity. <p><i>Best Practice: The Court should direct the agency to continue its active efforts to notify non-custodial parents, including unwed fathers whose paternity has not been acknowledged or established.</i></p> <ol style="list-style-type: none"> Attorney for parent(s) Indian custodian Legal custodian Petitioner The child’s school, if the matter is a truancy matter Any person who intervenes or who is joined Relatives or other persons providing care for the child Other relatives who request notice Attorney for parents or Indian custodian Responsible Social Services agency County attorney RJPP Guardian ad litem for child Guardian ad litem for parent, if appointed Attorney for the Guardian ad litem Grandparent(s) of the Indian child, if child has resided with grandparent(s) within two years preceding filing of petition 	<ul style="list-style-type: none"> RJPP 30.02 (EPC or Admit/Deny Hearing) RJPP 32.04 25 U.S.C. § 1912 25 U.S.C. § 1903(9) Minn. Stat. § 260C.163, subd. 2-3 <i>Valentine v. Lutz</i>, 512 N.W.2d 868 (Minn. 1994) (not former foster parents) <i>In re Welfare of Scott</i>, 244 N.W.2d 669 (Minn. 1976) (grandparents in private TPR)
34.07	<p>OTHER PEOPLE WHOSE PRESENCE WOULD BE USEFUL</p> <p>A. EXTENDED FAMILY MEMBERS. Defined by child’s tribe and may include other tribal members or other Indian families who may serve as placement resource for child.</p> <p><i>Comment: It is important to remember that in many Indian tribes, extended family members are often considered part of the nuclear family.</i></p> <p>B. TRIBAL SOCIAL SERVICES PROVIDERS AND NON-TRIBAL SERVICE PROVIDERS.</p> <p>C. OTHER WITNESSES. Includes tribal members or elders.</p>	<ul style="list-style-type: none"> 25 U.S.C. § 1903(2) 25 U.S.C. § 1915(b)

PROCEDURES APPLICABLE TO ALL ICWA HEARINGS

	PROCEDURE	AUTHORITY
	<p>34.07 Other People Whose Presence Would Be Useful (Continued)</p> <p>D. QUALIFIED EXPERT WITNESS. The ICWA prohibits foster care placement or termination of parental rights unless a district court determines by clear and convincing evidence (CHIPS) and evidence beyond a reasonable doubt (TPR), after hearing testimony of qualified expert witnesses, 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.</p> <p>Minnesota law defines a “qualified expert witness” as:</p> <ol style="list-style-type: none"> 1. 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; 2. 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 3. a professional person who has substantial education and experience in the area of her or his specialty and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community. <p><i>Best Practice: The parties to the Tribal State Agreement (Appendix B to this Chapter) encourage counties to seek a qualified expert witness from a list of qualified expert witnesses that the Indian child’s Tribe has designated. The qualifications of a tribally designated qualified expert witness shall not be subject to challenges in Indian child custody proceedings. When use of a tribally designated qualified expert witness is not possible, the State and Tribes recognize that persons with the following expertise and capacities will meet the requirements for a qualified expert witness. While not every qualified expert witness will demonstrate knowledge and understanding of each of these criteria, the parties encourage consideration of these criteria when establishing qualified expert witnesses to offer testimony concerning whether continued custody of the child by the parent or Indian custodian is likely to result in serious physical or emotional damage to the child:</i></p> <ol style="list-style-type: none"> (1) <i>Membership in the child’s tribe or significant experience with the child’s tribe;</i> (2) <i>Knowledge and understanding of the meaning of membership in the child’s tribe;</i> (3) <i>Knowledge and understanding of the meaning of clan relationships and extended family relationships in the child’s tribe;</i> (4) <i>Knowledge and understanding of the meaning of traditional and contemporary child rearing practices within the child’s tribe;</i> (5) <i>Knowledge and understanding of traditional disciplinary measures used within the child’s tribe;</i> (6) <i>Knowledge and understanding of ceremonial and religious practices and cultural traditions within the child’s tribe;</i> 	<ul style="list-style-type: none"> • 25 U.S.C. § 1912(e)-(f) • Minn. Stat. § 260.765 • <i>In re the Custody of S.E.G.</i>, 521 N.W.2d 357, 364-65 (Minn. 1994) (citing with modification the <i>Bureau of Indian Affairs Guidelines</i>, 44 Fed. Reg. 67,584, 67,595 at D.4.(b)) • Minnesota Rules 9560.0221, subpart 3.G.(2005). <p>Tribal State Agreement (part I(E)(33) (Feb. 2007) (attached as Appendix B)</p> <p>Tribal State Agreement (part I(E)(33) (Feb. 2007) (attached as Appendix B)</p>

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	<p>34.07 Other People Whose Presence Would Be Useful (Continued)</p> <p>(7) Knowledge and understanding of medicine and traditional healing of the child's tribe; and</p> <p>(8) Knowledge and understanding of the effect of acculturation or assimilation within the child's tribe.</p> <p><i>The parties to the Tribal State Agreement agree that the above criteria inform, and do not supplant the definition of a "qualified expert witness" under Minnesota law.</i></p> <p><i>Comment: Because a placement at an EPC hearing often extends beyond the EPC hearing, trying to obtain the advice of a Qualified Expert Witness will provide the Court with the best information at the earliest possible time in the proceedings. Such testimony will be required in subsequent proceedings beyond the EPC Hearing.</i></p>	
34.08	<p>FILING OF PETITION</p> <p>A. A Summons and Petition shall be filed at or before the EPC Hearing. If no EPC Hearing is held, the petition must be served at least three (3) days prior to the Admit/Deny hearing.</p> <p>B. The Petition must be complete and accurate, including stating whether the ICWA does or does not apply.</p>	<ul style="list-style-type: none"> • RJPP 30.07 • RJPP 32.02, subd. 5(a) <p>RJPP 33.02, subd. 1(g)</p>
34.09	<p>SERVICE OF SUMMONS AND PETITION</p> <p>A. GENERALLY. The Summons and Petition shall be served either at or before the EPC Hearing or at least three (3)¹³ days prior to the Admit/Deny Hearing, whichever is earlier. If service is made outside the state or by publication, the Summons shall be personally served, mailed, or last published at least ten (10) days before the hearing. In cases where publication is ordered in a CHIPS matter, published notice shall be made one time at least ten (10) days before the date of the hearing. In cases where publication is ordered in a TPR matter, published notice shall be made once per week for three (3) weeks with the last publication at least ten (10) days before the date of the hearing.</p> <p><i>Comment: Notice by publication is not appropriate in ICWA cases. Instead, if the identify or location of the parent is not known, notice must be served upon the Secretary of the Interior who shall have 15 days to provide notice to the parents, Indian custodian, and Indian tribe.</i></p> <p>B. WAIVER. Service of the Summons and Petition is waived by voluntary appearance in court or by a written waiver of service filed with the court.</p> <p><i>Comment: This waiver does not apply to the ICWA Notice to be served by the petitioner but, instead, only to notice of the date, time, and location of the hearing served by the court administrator.</i></p>	<ul style="list-style-type: none"> • RJPP 32.02, subd. 5(a) • RJPP 30.07 <p>25 U.S.C. § 1912(a)</p> <p>RJPP 32.02, subd. 6</p>

¹³ When calculating the three (3) days, the day service was made and any Saturday, Sunday, or legal holiday are not counted. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday in which event the period runs to the end of the next day that is not a Saturday, Sunday, or legal holiday. *RJPP 4.01.*

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<p>34.10 CONTENT OF SUMMONS</p> <p>A. GENERALLY. A Summons shall contain or have attached:</p> <ol style="list-style-type: none"> 1. A copy of the Petition (which shall include a statement about whether the ICWA does or does not apply), court order, motion, affidavit or other legal documents not previously provided; however, these documents shall not be contained in or attached to the summons and complaint if the court has authorized service of the summons by publication; 2. A statement of the time and place of the hearing; 3. A statement describing the purpose of the hearing; 4. A statement explaining the right to representation pursuant to RJPP 25; and 5. A statement that failure to appear may result in: <ol style="list-style-type: none"> (a) The child being removed from home pursuant to a child in need of protection or services petition; (b) The parent’s parental rights being permanently severed pursuant to a termination of parental rights petition; (c) Permanent transfer of the child’s legal and physical custody to a relative; (d) A finding that the statutory grounds set forth in the petition have been proved; and (e) An order granting the relief requested. <p>B. CHILD IN NEED OF PROTECTION OR SERVICES MATTERS. In addition to the content requirements set forth above in section A, in any child in need of protection or services matter the summons shall also contain or have attached a statement that:</p> <ol style="list-style-type: none"> 1. If the person summoned fails to appear, the court may conduct the hearing in the person’s absence; and 2. A possible consequence of the hearing is that the child may be removed from the home of the parent or legal custodian and placed in foster care, and such removal may lead to other proceedings for permanent out-of-home placement of the child or termination of parental rights. <p>C. TERMINATION OF PARENTAL RIGHTS MATTERS. In addition to the content requirements set forth above in section A, in any termination of parental rights matter the summons shall also contain or have attached a statement that if the person summoned fails to appear the court may conduct the hearing in the person’s absence and the hearing may result in termination of the person’s parental rights.</p> <p>D. PERMANENT PLACEMENT MATTERS. In addition to the content requirements set forth above in section A, in any permanent placement matter the summons shall also contain or have attached a statement that if the person summoned fails to appear the court may conduct the hearing in the person’s absence and the hearing may result in an order granting the relief requested in the petition.</p>	<ul style="list-style-type: none"> • RJPP 32.02, subd. 4(a) (content of summons) • RJPP 33.02, subd. 1(g) (applicability of ICWA) <p>RJPP 32.02, subd. 4(b)</p> <ul style="list-style-type: none"> • RJPP 33.02, subd. 4(c) • RJPP 18.01 <ul style="list-style-type: none"> • RJPP 33.02, subd. 4(d) • RJPP 18.01

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<p>34.11 PERSONS TO BE SERVED SUMMONS AND METHOD OF SERVICE</p> <p>A. PERSONS TO BE SERVED. The court administrator shall serve the Summons and Petition upon each party identified in RJPP 21 and upon any other person whose presence the court deems necessary to a determination concerning the best interests of the child. Pursuant to RJPP 21, parties are:</p> <ol style="list-style-type: none"> 1. The child, regardless of age, if the petition alleges the child is a <u>truant</u>, <u>runaway</u>, or engaged in prostitution (otherwise the child is a participant and only receives notice of the hearing and the petition) 2. The child’s guardian ad litem 3. The child’s legal custodian 4. The child’s parent or Indian custodian 5. The child’s Indian tribe <p><i>Comment: The person to be contacted varies from tribe to tribe. For in-state tribes, look to the Tribal State Agreement (Appendix B to this Chapter) and for out-state tribes look to the federal register.</i></p> <ol style="list-style-type: none"> 6. The petitioner 7. Any person who intervenes as a party pursuant to RJPP 23 8. Any person or agency joined as a party pursuant to RJPP 24, including the school district if joined in a <u>truancy</u> matter 9. Any other person, including a child, who is deemed by the court to be important to a resolution that is in the best interests of the child. <p>B. METHOD OF SERVICE</p> <ol style="list-style-type: none"> 1. Generally -- CHIPS, TPR, Other Permanency. Unless the court orders service by publication, the summons and petition shall be personally served upon the child’s parent or legal custodian, and personally or by U.S. mail upon all other parties and attorneys. <p><i>Comment: Notice by publication is not appropriate in ICWA cases. Instead, if the identify or location of the parent is not known, notice must be served upon the Secretary of the Interior who shall have 15 days to provide notice to the parents, Indian custodian, and Indian tribe.</i></p> <ol style="list-style-type: none"> 2. Habitual <u>Truant</u>, <u>Runaway</u>, and Prostitution Matters. <ol style="list-style-type: none"> (a) Generally. When the sole allegation is that the child is a habitual <u>truant</u>, a <u>runaway</u>, or engaged in prostitution, initial service may be made as follows: <ol style="list-style-type: none"> (1) the court may send notice and a copy of the petition or notice to appear by U.S. mail to the legal custodian, the person with custody or control of the child, and each party and participant; or (2) a peace officer may issue a notice to appear or a citation. (b) Failure to Appear. If the child or the child’s parent or legal custodian or the person with custody or control of the child fails to appear in response to the initial service, 	<p>RJPP 32.02, subd. 2</p> <p>RJPP 21.01 (identifies parties)</p> <p>RJPP 32.02, subd. 3(a)</p> <p>25 U.S.C. § 1912(a)</p> <p>RJPP 32.02, subd. 3(b)(1)</p>

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	<p>34.11 Persons to be Served Summons and Method of Service (continued)</p> <p>the court shall order such person to be personally served with a summons.</p> <p>C. WAIVER. Service of the Summons and Petition is waived by voluntary appearance in court or by a written waiver of service filed with the court.</p> <p><i>Comment: This waiver does not apply to the ICWA Notice to be served by the petitioner but, instead, only to notice of the date, time, and location of the hearing served by the court administrator.</i></p> <p>D. FAILURE TO APPEAR. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to RJPP 15 proceed against the person for contempt of court or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.</p> <p><i>Comment: A child taken into custody by reason of having been adjudicated in need of protection or services, including a child who is a <u>truant</u> or <u>runaway</u>, and including a child who has been conditionally released by the court without adjudication, "may be placed only in a shelter care facility." " Shelter care facility" means a "physically unrestricting facility." Thus, a child who fails to appear may be taken into custody, but may not be held in secure detention.</i></p>	<p>RJPP 32.02, subd. 3(b)(2)</p> <p>RJPP 32.02, subd. 6</p> <p>RJPP 32.02, subd. 7</p> <p>RJPP 15</p> <p>Minn. Stat. § 260C.181, subd. 3</p> <p>RJPP 2.01(v) (shelter care facility)</p>
34.12	<p>EXAMINATION OF REPORTS</p> <p>A. GENERALLY. ICWA provides that each party to a foster care placement or TPR proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.</p> <p><i>Comment: It is best practice to request that the parties sign releases so as to avoid federal data privacy law concerns. In the alternative, upon request or sua sponte the judge may issue an order authorizing release of reports to parties so as to avoid federal data privacy law concerns.</i></p> <p>B. AGENCY DATA. The local welfare agency responsible for conducting a family assessment or investigation shall collect available and relevant information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs and share not public information with an Indian's tribal social services agency without violating any law of the state that may otherwise impose duties of</p>	<p>25 U.S.C. § 1912(c)</p> <p>Minn. Stat. § 626.556, subd. 10(h)</p>

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	<p>34.12 Examination of Reports (continued)</p> <p>confidentiality on the local welfare agency in order to implement the tribal state agreement. The local welfare agency or the agency responsible for investigating the report shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for assessing or investigating the report may make a determination of no maltreatment early in an assessment, and close the case and retain immunity, if the collected information shows no basis for a full assessment or investigation.</p>	
	HEARING PROCEDURE	
34.13	<p>IDENTIFICATION OF FILE NAME AND NUMBER AND PERSONS PRESENT</p> <p>At the commencement of each hearing, it is best practice for the court to:</p> <ol style="list-style-type: none"> 1. State the case name and file number. 2. Ask all parties, participants, and attorneys present to identify themselves for the record. 3. Determine whether it is in the child's best interests to be present or to be excluded from the hearing. In cases where the child's behavior is the underlying cause of the petition, the child must be present to admit or deny the statutory grounds stated in the petition. 4. Inquire whether there is anyone in the audience who wishes to be identified because of an interest regarding the child or family. 	<p>See RJPP 34.03</p> <p>Minn. Stat. § 260C.163, subd. 7</p>
34.14	<p>INITIAL PROCEDURES</p> <p>At the commencement of the hearing the court shall:</p> <ol style="list-style-type: none"> 1. Determine whether all parties and participants present understand English. <p><i>Comment: If a parent or other party does not understand English and an interpreter is not available, it is best practice to make a decision that ensures the child's safety and continue the hearing until the soonest practicable time that an interpreter is available.</i></p> <ol style="list-style-type: none"> 2. Verify the name, date of birth, and current address of the child who is the subject of the matter, unless stating the information would endanger the child or seriously risk disruption of the current placement. 	RJPP 30.05

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	<p>34.14 Initial Procedures (continued)</p> <p>3. Determine if the child is an Indian child by inquiring of the child’s parent or Indian custodian, Indian tribe, or other parties present whether:</p> <ul style="list-style-type: none"> a. the child is under age 18; b. the child is unmarried; <u>and</u> c. the child is either: <ul style="list-style-type: none"> • A member of a federally recognized tribe as determined by the Indian child’s tribe; <u>or</u> • Eligible for membership in an Indian tribe as determined by the Indian child’s tribe. <p><i>Comment: If the court is unable to determine from the information provided in the Petition or during the hearing whether the child is an Indian child, the Court should direct the agency to make further inquiry of the family and Tribe. If there is reason to believe that the child may be an Indian child, the Court should treat the matter as an ICWA matter until the Tribe advises the Court to the contrary or until the Court determines otherwise if the Tribe indicates that it is unable to make such a determination. If the court determines that the child is not an Indian child, follow procedures in Chapter 8 regarding a non-ICWA EPC Hearing.</i></p> <p>4. Determine whether the child either is a resident of or is domiciled on a reservation.</p> <p><i>Comment: This is an important determination because it goes to the issue of whether the child is rightly under the jurisdiction of the state court. If the child is a resident of or domiciled on a reservation, then the Indian tribe shall have jurisdiction exclusive as to any state over any child custody proceeding involving an Indian child, except where such jurisdiction is otherwise in the State by existing Federal law. If it is determined that the Tribe has exclusive jurisdiction, then the Court should inquire of the Tribe whether the Tribe intends to exercise jurisdiction and, if so, transfer the matter to Tribal Court.</i></p> <p>5. Determine whether the child is already a ward, or under the jurisdiction, of a tribal court.</p> <p><i>Comment: An Indian tribe has exclusive jurisdiction over a child placement proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except where jurisdiction is otherwise vested in the state by existing federal law. When an Indian child is a ward of the tribal court, the Indian tribe retains exclusive jurisdiction, notwithstanding the residence or domicile of the child.</i></p> <p><i>Comment: If the child is already a ward of or under the jurisdiction of the tribal court, the Indian tribe shall retain exclusive jurisdiction</i></p>	<ul style="list-style-type: none"> • 25 U.S.C. § 1903(4) • Minn. Stat. § 260.755, subd. 8 • <i>In re S.N.R.</i>, 617 N.W.2d 77 (Minn. Ct. App. 2000) <p>25 U.S.C. § 1911(a)</p> <p>See the Tribal State Agreement (Part 1(C)(3))</p> <p>25 U.S.C. § 1911(a)</p> <p>Minn. Stat. § 260.771, subd. 1</p>

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	<p>34.14 Initial Procedures (continued)</p> <p><i>notwithstanding the residence or domicile of the child. If the Court is unable to determine at this hearing whether the child is a ward of tribal court, the court should direct the responsible social services agency to make further inquiries.</i></p> <p>6. Determine whether the child has an Indian custodian.</p> <p><i>Comment: If the Indian custodian has not already been notified of the pending proceeding, the court must direct such notice.</i></p> <p>7. Determine whether the child’s parent or Indian custodian and Indian tribe have been notified of the hearing, and what further action, if any, must be taken to notify them as rapidly as possible of the pending matter and the date and time of the next hearing.</p> <p>8. Determine whether the agency has mailed the ICWA Notice, by registered mail with return receipt requested, to the child’s parents or Indian custodian and Indian tribe, or to the U.S. Secretary of the Interior if the identity of the parent, Indian custodian or Indian tribe is unknown.</p> <p><i>Comment: While federal law does not specify where the return receipt is to be maintained, RJPP requires that the receipt or a copy of it be filed in the court file.</i></p> <p><i>Best Practice: The best practice is to serve the ICWA Notice upon all potential tribes of which the child may be a member. The ICWA Notice should include a family chart or genogram to facilitate the tribe’s membership determination.</i></p> <p><i>Comment: The ICWA provides that no foster care placement or TPR hearing shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and tribe or the Secretary, provided that the parent or Indian custodian or tribe shall, upon request, be granted up to 20 additional days to prepare for such proceeding. Given the expedited nature of EPC Hearings, service of the ICWA Notice by the petitioner should be attempted, but is not required, by the time of the EPC Hearing, although such service must be accomplished as soon as possible.</i></p> <p>9. Review the “EPC Hearing Contact” list or other written statement located in the court file and determine whether all required persons have been informed of the time and place of the hearing, and what further action, if any, must be taken to notify all parties and participants and attorneys as rapidly as possible of the pending matter and the date and time of the next hearing.</p>	<p>25 U.S.C. § 1903(6)</p> <p>• 25 U.S.C. § 1912(a) • RJPP 21.01</p> <p>• RJPP 30.04 • 25 U.S.C. § 1912(a) • RJPP 32.06</p> <p>RJPP 32.06</p> <p>25 U.S.C. § 1912</p> <p>RJPP 30.04</p>

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	<p>34.14 Initial Procedures (continued)</p> <p>10. Determine whether any other persons, including relatives and extended family members, should be included as parties or participants and notified of the date and time of the next hearing.</p> <p>11. Appoint a guardian ad litem for the child, if one has not already been appointed.</p> <p>12. Determine whether a guardian ad litem should be appointed for any parent or legal custodian or Indian custodian.</p> <p>13. Determine whether all parties and participants have been served a copy of the petition either at or before the commencement of the hearing. Unless a party otherwise consents to do so, a party may not be required to admit or deny the statutory allegations of the petition if the party did not receive possession of the petition at least three (3) days before the hearing.</p> <p>14. Inquire about the address or location of any party, participant, or other person who is not present at the hearing.</p> <p>15. Advise any Indian child and the child’s parent or Indian custodian or legal custodian who appears in court and is unrepresented of the right to representation (see Chapter 23).</p> <p>16. If the parties agree to combine an Admit/Deny Hearing with the EPC Hearing, determine whether any affected person waives the 3-day service requirement if the notice requirements have not been met; if the person does not waive the 3-day requirement, an Admit/Deny Hearing cannot be commenced in conjunction with the EPC Hearing.</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260.761, subd. 7 • 25 U.S.C. § 1903(2) (definition of extended family member) <p>Minn. Stat. 260C.163, subd. 3 RJPP 26.02</p> <p>RJPP 32.02, subd. 5(a)</p> <p>RJPP 30.04</p> <p>RJPP 30.05(e)</p> <p>RJPP 34.02, subd. 1(a)</p>
34.15	<p>GENERAL RIGHTS ADVISORY</p> <p>A. INQUIRE ABOUT VIEWING OF VIDEO. Inquire whether the parties and participants have viewed the video entitled “<i>In the Best Interests of Your Child.</i>” This video is intended to replace the need for the court to discuss in detail the “General Rights and Procedures Advisory” set forth below and, instead, allow the court to go into detail about any right or procedure that a party may not fully understand.</p> <p><i>Comment: Contact State CJI Staff at 651-297-7587 if your court has not received a copy of the video.</i></p> <p>B. HEARING TO BE CONDUCTED IN COMPLIANCE WITH ICWA.</p> <p>1. Advise all present that this hearing and all future hearings will be conducted in accordance with the ICWA and the MIFPA.</p>	<p>See RJPP 30.05</p> <ul style="list-style-type: none"> • 25 U.S.C. § 1911(a) • Minn. Stat. §§ 260.751 et. seq.

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	PROCEDURE	AUTHORITY
	<p>34.15 General Rights Advisory (continued)</p> <p>2. Advise all present that upon petition of either the parent or Indian custodian or Indian tribe the court, absent good cause, shall transfer the proceeding to tribal court, unless the parent objects, subject to declination by tribal court.</p> <p>C. INQUIRE ABOUT UNDERSTANDING OF BASIC RIGHTS AND PROCEDURES. The court shall inquire on the record about whether the parties and participants understand their basic rights. For parties and participants who have not viewed the video, or who state that they do not understand the rights, the court shall on the record advise all parties, participants, and attorneys present of the following:</p> <p>1. The purpose of the hearing: To determine whether the conditions that necessitated removal of the child from the home have been mitigated to the degree that it is safe for the child to return home and, if the parties agree, to also determine whether the pertinent parties wish to admit or deny the statutory allegations stated in the petition.</p> <p>2. The possible consequences of failure to appear at hearings:</p> <p>(a) A finding that the petition has been proved,</p> <p>(b) An order adjudicating the child in need of protection or services,</p> <p>(c) An order removing the child from the care of the parent or Indian custodian, including an order</p> <ul style="list-style-type: none"> • terminating the parent’s rights, • transferring permanent legal and physical custody of the child to a relative, • placing the child in long term foster care or foster care for a specified period of time, • Allowing a child age 16 or older to live independently, • or <p>(d) Arrest and/or contempt of court.</p> <p>3. The Possible Consequences of Child Protection Proceeding: Failure to comply with the court’s orders and to make progress on a case plan ordered or approved by the court may result in the permanent removal of the child from the care of the parent or Indian custodian, including an order terminating the parent’s rights or transferring permanent legal and physical custody of the child to another.</p>	<ul style="list-style-type: none"> • 25 U.S.C. § 1911(b) • Minn. Stat. § 260C.771, subd. 1 <ul style="list-style-type: none"> • RJPP 21.02 (parties) • RJPP 22.02 (participants) <p>RJPP 30.01</p> <ul style="list-style-type: none"> • RJPP 34.03, subd. 1(h) • RJPP 32.02, subd. 4(a)(5) • RJPP 18.01 (default options) • RJPP 32.02, subd. 7 (contempt or warrant for arrest may be issued) <p>Minn. Stat. § 260C.201 (permanency decision may include permanent removal of child)</p>

PROCEDURES APPLICABLE TO ALL ICWA HEARINGS

	PROCEDURE	AUTHORITY
	<p>34.15 General Rights Advisory (continued)</p> <p>4. The Right to Representation: The right to representation if any child or child’s parent or legal custodian appears in court and is not represented by counsel.</p> <p>a. Right to Representation Generally: Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. This right attaches no later than when the party or participant first appears in court. This does not mean the person has the right to court-appointed counsel.</p> <p>b. Right to Representation – Child: The child is entitled to counsel as follows:</p> <p>(1) The court in its discretion may appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.</p> <p>(2) In any proceeding where the sole basis for the petition is habitual <u>truancy</u>, the child does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement can be ordered, including foster care or inpatient treatment, the court shall appoint a public defender or other counsel at public expense to represent the child.</p> <p><i>Comment: The court should inquire at the outset of the case about whether out-of-home placement is contemplated. If it is, the court should invite argument about whether the ICWA protections are or are not triggered and, therefore, whether counsel should or should not be appointed for the child.</i></p> <p>(3) Counsel for the child shall not serve as the child’s guardian ad litem.</p> <p>c. Right to Representation – Parent or Legal Custodian:</p> <p>1. If the child’s parent or Indian custodian is unable to afford it, the court shall appoint counsel to represent the parent or Indian custodian.</p> <p>2. In any proceeding where the sole basis for the petition is <u>truancy</u>, the parent or legal custodian does not have the right to appointment of a public defender or other counsel at public expense.</p> <p><i>Comment: The court should inquire at the outset of the case about whether out-of-home placement is contemplated. If it is, the court should invite argument about whether the ICWA protections are or are not triggered and, therefore, whether counsel should or should not be appointed for the child.</i></p>	<p>RJPP 25</p> <p>RJPP 25.01</p> <ul style="list-style-type: none"> • RJPP 25.02, subd. 1(c) • 25 U.S.C. § 1912(b) • RJPP 25.02, subd. 1(b) • Minn. Stat. § 260C.163, subd. 3(c) • RJPP 25.02, subd. 1 • Minn. Stat. § 260C.163, subd. 3(d) • RJPP 25.02, subd. 2(c) • 25 U.S.C. § 1912(b) • 25 U.S.C. § 1912(b) • RJPP 25.02, subd. 2(b) • Minn. Stat. § 260C.163, subd. 3(b)

PROCEDURES APPLICABLE TO ALL ICWA HEARINGS

PROCEDURE	AUTHORITY
<p>34.15 General Rights Advisory (continued)</p> <p>d. Right to Representation – Guardian Ad Litem: The court may appoint separate counsel for the guardian ad litem if necessary. A public defender may not be appointed as counsel for a guardian ad litem.</p> <p>e. Reimbursement: When an attorney or a guardian ad litem is appointed for a child or a child’s parent, legal custodian, or Indian custodian, the court may inquire into the ability of the parent or custodian to pay for the person’s services and, after giving the custodian a reasonable opportunity to be heard, may order the parent or custodian to pay such fees.</p> <p>5. Basic procedural rights of a <u>party</u>, including the right to:</p> <p>(a) Notice of all hearings;</p> <p>(b) Legal representation;</p> <p>(c) Be present at all hearings unless excluded;</p> <p>(d) Conduct discovery, including copies of social services file;</p> <p>(e) Bring motions before the court;</p> <p>(f) Participate in settlement agreements;</p> <p>(g) Subpoena witnesses to testify on the person’s behalf;</p> <p>(h) Cross-examine other parties’ witnesses;</p> <p>(i) Make argument in support of or against the petition;</p> <p>(j) Present evidence;</p> <p>(k) Request review of the court’s disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;</p> <p>(l) Bring post-trial motions;</p> <p>(m) Appeal from final orders of the court.</p> <p>6. Basic procedural rights of a <u>participant</u>, including the right to:</p> <p>(a) Notice of all hearings;</p> <p>(b) A copy of the petition;</p> <p>(c) Be present at all hearings, unless excluded; and</p> <p>(d) Offer information at the discretion of the court.</p> <p>7. The expedited permanency timeline. If the child has been ordered into out-of-home placement and has not been returned home:</p> <p>(a) For a child under age 8, a Permanency Progress Review Hearing must be commenced within 180 days of the child’s court-ordered removal from home. The purpose of the hearing is to determine whether the parent or legal custodian has maintained regular contact</p>	<p>RJPP 25.02, subd. 3</p> <ul style="list-style-type: none"> • RJPP 26.05 (GAL) • RJPP 25.03 (attorney) • Minn. Stat. § 260C.163, subd. 3 (attorney) • Minn. Stat. § 260C.163, subd. 5 (GAL) <ul style="list-style-type: none"> • RJPP 21.02 • Minn. Stat. § 260C.331, subs. 5 and 6 (attorney and GAL) <p>RJPP 22.02, subd. 1</p> <ul style="list-style-type: none"> • RJPP 42.01, subd. 1(a) • Minn. Stat. § 260C.201, subd. 11a

PROCEDURES APPLICABLE TO ALL ICWA HEARINGS

PROCEDURE	AUTHORITY
<p>34.15 General Rights Advisory (continued)</p> <p>with the child and is complying with the case plan, and whether it is safe for the child to be returned home.</p> <p>(1) If the parent is complying with the case plan <u>and</u> maintaining regular contact with the child as required in the case plan, and if the court determines that the child would benefit from continuing this relationship, the court may either:</p> <p style="padding-left: 40px;">(i) Return the child home, if the conditions that led to the out-of-home placement have been sufficiently mitigated that it is safe and in the child's best interests to be returned home; or</p> <p style="padding-left: 40px;">(ii) Continue the matter up to a total of six additional months, at which time the court must conduct a Permanent Placement Determination Hearing if the child has not been safely returned home.</p> <p>(2) If the parent is not complying with the case plan <u>or</u> not maintaining regular contact with the child as required in the case plan, the court may order the responsible social services agency to file a petition for the child's permanent placement away from the parent.</p> <p>(b) If the child, regardless of age, remains in out-of-home placement, a Permanent Placement Determination Hearing must be commenced within 365 days of the child's court-ordered removal from home. The purpose of the hearing is to review the parent's or legal custodian's progress on the case plan and the services provided by the agency. The court shall determine whether the child can be safely returned home or, if not, order permanent placement consistent with the child's best interests, including terminating the parent's rights or permanently transferring the child's legal and physical custody to a relative.</p>	<ul style="list-style-type: none"> • RJPP 42.01, subd. 1(b) • Minn. Stat. § 260C.201, subd. 11(a)
<p>34.16 ORDER</p> <p>A. ORAL ORDER REDUCED TO WRITTEN ORDER. Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing.</p> <p>B. TIMING OF ORDER. The order shall be filed with the court administrator within ten (10) days of the conclusion of the hearing. An order shall remain in full force and effect until the first occurrence of one of the following:</p> <ol style="list-style-type: none"> 1. Issuance of an inconsistent order; 2. The order ends pursuant to the terms of the order; or 3. Jurisdiction of the juvenile court is terminated. 	<p>RJPP 10.01</p> <p>RJPP 10.01</p> <p>RJPP 10.02</p>

PROCEDURES APPLICABLE TO ALL ICWA HEARINGS		
	PROCEDURE	AUTHORITY
	<p>34.16 Order (continued)</p> <p>C. IMMEDIATE EFFECT OF ORAL ORDER. Unless otherwise ordered by the court, an order stated on the record shall be effective immediately.</p> <p>D. DELIVERY; MAILING. Court orders shall be delivered or mailed by the court administrator within five (5) days of the date the judicial officer delivers the order to the court administrator.:</p> <ol style="list-style-type: none"> 1. Delivered at the close of the hearing; or 2. Mailed by the court administrator to each party, the county attorney, and such other persons as the court may direct. 3. If a party is represented by counsel, delivery or service shall be upon counsel. If service of the summons was by publication and the person has not appeared either personally or through counsel, service of court orders upon the person is not required. <p><i>Best Practice: While the Rule provides that service shall be upon counsel, even though the party is represented the best practice is to also provide a copy directly to the party to ensure it is timely received and to allow the parent to more quickly begin work on the case plan. The best practice is to distribute the order at the close of the hearing.</i></p>	<p>RJPP 10.03</p> <p>RJPP 10.03</p>
34.17	<p>NOTICE OF SUBSEQUENT HEARINGS</p> <p>The court administrator shall serve upon each party, participant, and attorney a notice of the date, time, and location of the next hearing. The notice shall be:</p> <ol style="list-style-type: none"> 1. Delivered at the close of the hearing (if written notice is delivered at the end of the hearing, later written notice is not required), 2. Mailed at least five (5) days before the date of the next hearing, or 3. Mailed fifteen (15) days before the date of the hearing if mailed to an address outside the state. 	RJPP 32.04

APPENDICES:

INDIAN CHILD WELFARE ACT (ICWA)

**42 UNITED STATES CODE TITLE 25
INDIANS CHAPTER 21**

CHAPTER 21 - INDIAN CHILD WELFARE

- § 1901. Congressional findings.
- § 1902. Congressional declaration of policy.
- § 1903. Definitions.

SUBCHAPTER I - CHILD CUSTODY PROCEEDINGS

- § 1911. Indian tribe jurisdiction over Indian child custody proceedings.
- § 1912. Pending court proceedings.
- § 1913. Parental rights; voluntary termination.
- § 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations.
- § 1915. Placement of Indian children.
- § 1916. Return of custody.
- § 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court.
- § 1918. Reassumption of jurisdiction over child custody proceedings.
- § 1919. Agreements between States and Indian tribes.
- § 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.
- § 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child.
- § 1922. Emergency removal or placement of child; termination; appropriate action.
- § 1923. Effective date.

SUBCHAPTER II - INDIAN CHILD AND FAMILY PROGRAMS

- § 1931. Grants for on or near reservation programs and child welfare codes.
- § 1932. Grants for off-reservation programs for additional services.
- § 1933. Funds for on and off reservation programs.
- § 1934. "Indian" defined for certain purposes.

SUBCHAPTER III - RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

- § 1951. Information availability to and disclosure by Secretary.
- § 1952. Rules and regulations.

SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

- § 1961. Locally convenient day schools.
- § 1962. Copies to States.
- § 1963. Severability.

§ 1901. CONGRESSIONAL FINDINGS

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds:

- (1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
- (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
- (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
- (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
- (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

§ 1902. CONGRESSIONAL DECLARATION OF POLICY

The Congress hereby declares that 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 operation of child and family service programs.

§ 1903. DEFINITIONS

For the purposes of this chapter, except as may be specifically provided otherwise, the term:

- (1) "child custody proceeding" shall mean and include –
 - (i) "foster care placement" which shall mean 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;
 - (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
 - (iii) 'preadoptive' placement" which shall mean 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
 - (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall 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.
- (2) "extended family member" shall be as 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 as 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;
- (3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;
- (4) "Indian child" means any unmarried person who is under age eighteen and is either

- (a) a member of an Indian tribe or
- (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
- (5) "Indian child's tribe" means
 - (a) the Indian tribe in which an Indian child is a member or eligible for membership or
 - (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;
- (6) "Indian custodian" means 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;
- (7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;
- (8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;
- (9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;
- (10) "reservation" means Indian country as defined in section 1151 of title 18 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;
- (11) "Secretary" means the Secretary of the Interior; and
- (12) "tribal court" means 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 .

§ 1911. INDIAN TRIBE JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall 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.

§ 1912. PENDING COURT PROCEEDINGS

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court appointed counsel in any removal, placement, or termination proceeding. 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. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

§ 1913. PARENTAL RIGHTS; VOLUNTARY TERMINATION

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

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.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a 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.

§ 1914. PETITION TO COURT OF COMPETENT JURISDICTION TO INVALIDATE ACTION UPON SHOWING OF CERTAIN VIOLATIONS

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

§ 1915. PLACEMENT OF INDIAN CHILDREN

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a 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.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with -

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

§ 1916. RETURN OF CUSTODY

(a) Petition; best interests of child

Notwithstanding State law to the contrary, 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 and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

§ 1917. TRIBAL AFFILIATION INFORMATION AND OTHER INFORMATION FOR PROTECTION OF RIGHTS FROM TRIBAL RELATIONSHIP; APPLICATION OF SUBJECT OF ADOPTIVE PLACEMENT; DISCLOSURE BY COURT

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

§ 1918. REASSUMPTION OF JURISDICTION OVER CHILD CUSTODY PROCEEDINGS

(a) Petition; suitable plan;

Approval by Secretary Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

1. In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:
 - i. whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

- ii. the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;
 - iii. the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and
 - iv. the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.
2. In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

§ 1919. AGREEMENTS BETWEEN STATES AND INDIAN TRIBES

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

§ 1920. IMPROPER REMOVAL OF CHILD FROM CUSTODY; DECLINATION OF JURISDICTION; FORTHWITH RETURN OF CHILD: DANGER EXCEPTION

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

§ 1921. HIGHER STATE OR FEDERAL STANDARD APPLICABLE TO PROTECT RIGHTS OF PARENT OR INDIAN CUSTODIAN OF INDIAN CHILD

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

§ 1922. EMERGENCY REMOVAL OR PLACEMENT OF CHILD; TERMINATION; APPROPRIATE ACTION

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

§ 1923. EFFECTIVE DATE

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

§ 1931. GRANTS FOR ON OR NEAR RESERVATION PROGRAMS AND CHILD WELFARE CODES

(a) Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to:

- (1) a system for licensing or otherwise regulating Indian foster and adoptive homes;
- (2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
- (3) family assistance, including homemaker and home counselors, day care, after school care, and employment, recreational activities, and respite care;
- (4) home improvement programs;
- (5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;
- (6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;
- (7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

- (8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; state licensing or approval for qualification for assistance under federally assisted program

Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act (42 U.S.C. 620 et seq., 1397 et seq.) or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

§ 1932. GRANTS FOR OFF-RESERVATION PROGRAMS FOR ADDITIONAL SERVICES

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to –

- (1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;
- (2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;
- (3) family assistance, including homemaker and home counselors, day care, after school care, and employment, recreational activities, and respite care; and
- (4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

§ 1933. FUNDS FOR ON AND OFF RESERVATION PROGRAMS

(a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments

In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Appropriation authorization under section 13 of this title

Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title.

§ 1934. "INDIAN" DEFINED FOR CERTAIN PURPOSES

For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.

§ 1951. INFORMATION AVAILABILITY TO AND DISCLOSURE BY SECRETARY

(a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act

Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show -

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

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended. (b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

§ 1952. RULES AND REGULATIONS

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

§ 1961. LOCALLY CONVENIENT DAY SCHOOLS

(a) Sense of Congress

It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

§ 1962. COPIES TO THE STATES

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

§ 1963. SEVERABILITY

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

**TRIBAL/STATE
AGREEMENT**

February 22, 2007

TRIBAL/STATE AGREEMENT

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PART I. INTRODUCTION

A. HISTORY

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, as well as state and local child welfare policies, in terms of the destruction of Indian families. Prior to 1978, Indian children were being placed in foster care at a nationwide rate ten to twenty 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, codified at 25 U.S.C. §§ 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 culture and social standards prevailing in Indian communities and families." 25 U.S.C. § 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 U.S.C. § 1902.

Minnesota established the above concepts as state policy and passed the Minnesota Indian Family Preservation Act (Minn. Stat. §§ 260.751 to 260.835) 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 tribal identity of an Indian child and recognize tribes as the appropriate entities to provide direction to the State as to the best interests of tribal children. In addition, Minnesota child protection statutes must be construed consistently with the Indian Child Welfare Act. See Minn. Stat. § 260C.168 (2006).

These two laws apply specifically to the provision of child welfare services to Indian children. Indian children are entitled also to all rights granted other children under any other federal or state law when those rights are not in conflict with federal law and when the state statute provides greater protection for the preservation of Indian family unity, extended family members, and continued tribal affiliation. The federal Indian Child Welfare Act takes precedence over all state laws and all other federal laws that may conflict regarding Indian child welfare cases, unless the state law or other federal law provides a higher standard of protection for the rights of the parent(s) or Indian custodian(s). 25 U.S.C. § 1921. The goal is to ensure that the Indian children remain with their parents whenever possible. If that is not possible, then placement must be with the extended family, and when that is not possible, then with an Indian custodian of the child's tribe, and when that is not possible, an Indian person and thereafter with a person of Indian descent.

The Indian Child Welfare Act authorizes the states and Indian tribes to enter into agreements concerning the care and custody of Indian children and jurisdiction over child custody proceedings involving such children. 25 U.S.C. § 1919. The Commissioner of Human Services is

authorized to enter into this Agreement on behalf of the State of Minnesota. Minn. Stat. § 260.771, subd. 5 (2006). The Department of Human Services (hereafter “the Department”) and the Tribes signing this Agreement, hereby enter into this Agreement to further the national policy declared in 25 U.S.C. § 1902, to protect the best interests of Indian children and promote the stability and security of Indian tribes and families.

B. PURPOSE

This Agreement is intended to coordinate the abilities and to maximize the guidance, resources and participation of tribes in order to remove barriers from the process that impede the proper care of Indian children. 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 each of the eleven tribes located within the geographical bounds of the State of Minnesota and the Minnesota Department of Human Services for the delivery of child welfare services.

This Agreement states the policies and procedures agreed to by both the tribes and the State and specifies the roles and duties of each in the implementation of child welfare services to Indian families and children. It is the intent of the parties to this Agreement, the Minnesota Department of Human Services and each of the eleven tribes located within the geographical bounds of the State of Minnesota, that this Agreement applies to all Indian children in Minnesota, regardless of whether the child's Tribe, Band or Nation executed this Agreement, as all Indian children subject to any child custody proceeding are guaranteed the protections set forth in the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act. The State agrees to apply the protections of the Agreement to *a//* Indian children in Minnesota who are covered by the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

The purpose of this Agreement is to protect the long term best interests, as defined by the tribes, of Indian children and their families, by maintaining the integrity of the Tribal family, extended family and the child's Tribal relationship. The best interests of Indian children are inherently tied to the concept of belonging. Belonging can only be realized for Indian children by recognition of the values and ways of life of the child's Tribe and support of the strengths inherent in the social and cultural standards of tribal family systems. Family preservation shall be the intended purpose and outcome of these efforts.

The foundation of this Agreement is the acknowledgment that Indian people understand that their children are the future of their tribes and vital to their very existence. An Indian child is sacred and close to the creator.

The United States Supreme Court has determined that distinct congressional treatment of Indians is not a prohibited racial classification. The Court determined that deferential treatment provided under Congressional acts is allowed by the “special relationship” that the federal government has established with Indian tribes. The Court found a special relationship was derived from the separate constitutional status of Indian tribes under the United States Constitution. Morton v. Mancari, 417 U.S. 535, 551-554 (1974).

The State recognizes its responsibilities to protect Indian children as required by the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act and the clear intent of those laws to protect an Indian child's sense of belonging to family and tribe. The State further recognizes that executing these responsibilities will require collaboration with the tribes and the use of the guidance, resources and participation of a child's tribe.

The parties to this Agreement intend by this Agreement to strengthen implementation of the letter, spirit and intent of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act. The parties to this Agreement further intend to ensure that any Department regulations, directives, policies or manual instructions are applied consistently with the terms of this Agreement, the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

The parties to this Agreement intend that this Agreement shall not affect any existing agreements between the tribes and local social service agencies or other agencies using a higher standard of protection to the relationship between Indian children and their families and their tribes than this Agreement.

C. LEGAL AUTHORITY

Pursuant to the laws of the State of Minnesota, the Department of Human Services has the authority and responsibility to support and strengthen the integrity of families and to protect and contribute to the welfare of children of the State through a comprehensive and coordinated program of public child welfare services. The Department also has the responsibility and authority to ensure that the local social service agencies and private placement agencies follow applicable federal and state laws, rules, and regulations and this Agreement. Minn. Stat. § 256.01, subd. 2(c) (2006).

1. Jurisdiction

The Indian Child Welfare Act provides that tribes have exclusive jurisdiction “over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law.” 25 U.S.C. § 1911 (a). In addition, “[w]here an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.” Id.

No provision of this Agreement is intended to change the jurisdictional provisions set forth in the Indian Child Welfare Act in any manner. In addition, any reference or statement or conclusion regarding Public Law 280 shall not be interpreted to include the Red Lake Nation Reservation and the Bois Forte Band of Chippewa or any other Tribe over which Public Law 280 jurisdiction has been retroceded by the State of Minnesota.

The parties to this Agreement commit to adhere to the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act so that appropriate care is provided to Indian children in state Child in Need of Protection or Services (“CHIPS”) and permanency proceedings. The parties acknowledge that, as sovereigns, they may disagree as to the extent of each others’ authority, power and jurisdiction in such proceedings. The parties agree, however, that the fundamental purpose of the federal and state laws and the fundamental purpose for making this Agreement is to secure and to preserve an Indian child’s sense of belonging to her or his family and Band or Tribe. They agree that cooperating to combine their abilities and resources to provide effective assistance to Indian children and their families is the best means to reach this shared goal.

The parties recognize that the necessary understanding of an individual tribe’s history, religion, values, mores, and child-rearing practices is best obtained from each tribe. To ensure that services that are compliant with the Indian Child Welfare Act are provided to an Indian child and her or his family, the parties agree to use their stated cooperation and collaboration to obtain guidance from tribal resources before actions are taken that could disrupt an Indian child’s relationship to family and tribe.

The State further recognizes that collaboration between counties and tribes is crucial in obtaining the best results for an Indian child. At a minimum, best practices require that a local social service agency immediately notify designated tribal authorities and request their assistance to enter the reservation when a situation arises that requires assessment of or investigation into the safety or well-being of an Indian child, or a child whose Indian identity is not known, and who resides or is domiciled on a reservation. To achieve the best protection for an Indian child and family, it is the sense of the State that the local social service agency will work with tribal authorities and the Department to conduct joint investigations and assessments of allegations of maltreatment or neglect of Indian children. This understanding does not apply to issues arising solely within the jurisdiction of the Red Lake Nation and the Bois Forte Band of Chippewa or any other Tribe over which Public Law 280 jurisdiction has been retroceded by the State of Minnesota.

It is also the sense of the State that counties should forge local agreements with tribes concerning procedures for promptly and effectively sharing information concerning the safety or well-being of an Indian child who resides or is domiciled on a reservation to which Public Law 280 may apply. These local agreements should establish the framework for conducting joint investigations and assessments of allegations of maltreatment or neglect of Indian children within established time frames. At any county

or tribe's request, the State agrees to offer technical assistance in drafting such a local agreement.

This Agreement specifically recognizes that the tribes are the sole interpreters of their constitutions and any tribe may grant its tribal court jurisdiction to hear and determine Indian child welfare matters at its discretion.

The parties agree that the local social service agencies and private child placing agencies are required under federal and state law to inquire if a child who may be at risk of out-of-home placement is an Indian child and to identify the child's tribe(s).

2. Notice to Tribes

The parties agree that the tribe(s) shall be timely notified by registered mail with return receipt requested, so that the tribe(s) may participate in a child custody proceeding or may choose to exert tribal jurisdiction over the child. 25 U.S.C. §§ 1911(b) and 1912(a). If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner. *Id.*

The parties agree that when an Indian child is taken into emergency protective care, the court administrator, or designee, should, as soon as possible and before any hearing takes place, inform the county attorney; the responsible social services agency; the child; and the child's counsel, guardian ad litem, parent(s), legal custodian(s), spouse, Indian custodian(s), and Indian tribe(s), by telephone or facsimile of the date, time and place of the emergency protective care hearing. *See* Minn. R. Juv. Prot. P. 32.03, subd. 2. Appropriate tribal contacts are available through the Bureau of Indian Affairs website.

The Tribes agree to make good faith efforts to respond to the notice.

3. Transfer to Tribal Courts

The parties recognize that Minnesota case law has determined that a "transfer of jurisdiction over Indian child custody matters to tribal authorities is mandated by the Indian Child Welfare Act whenever possible." *In re the Matter of the Welfare of B.W.*, 454 N.W.2d 437, 446 (Minn. Ct. App. 1990). The parties recognize that tribes are parties to child custody proceedings under the Minnesota Rules of Juvenile Protection Procedure. Minn. R. Juv. Prot. P. 21.01, subd. 1(c); *see also* Minn. Stat. § 260.761, subd. 6 (2006).

- a. The parties agree that, except in emergencies, the following child custody proceedings must be transferred to tribal court:
 - (1) any such proceeding involving a ward of the tribal court; or
 - (2) any such proceeding involving an Indian child who resides or is domiciled within the reservation of such Tribe. 25 U.S.C. § 1911(a).
- b. The parties agree that, except in emergencies, upon petition of a parent, an Indian custodian or an Indian child's Tribe any child placement/custody proceedings involving an Indian child who neither resides nor is domiciled within the reservation of such child's Tribe, must be transferred to the tribal court, unless:
 - (1) Good cause to the contrary exists for the transfer. Good cause is a fact-specific inquiry to be determined on a case-by-case basis. If a petition

to transfer proceedings is filed, the court may find good cause to deny the petition if any one of the following circumstances exists:

- (a) The Indian child's tribe does not have a tribal court as defined by the Indian Child Welfare Act to which the case can be transferred and no other Tribal Court has been designated by the Indian child's tribe. Dep't of the Interior Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings (hereafter "Bureau of Indian Affairs Guidelines"), 44 Fed. Reg. No. 228, 67,584, 67,595 at C.3(a) (Nov. 26, 1979). The Indian Child Welfare Act defines "tribal court" broadly to include courts and "any other administrative body of a tribe which is vested with authority over child custody proceedings." 25 U.S.C. § 1903(12);
 - (b) The petition is inexcusably filed when the proceeding is already at an advanced stage. The parties understand that fundamental tribal values may guide the timing by a tribe to petition for a transfer; or
 - (c) The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses and the tribal court is unable to mitigate the hardship by any means permitted in the tribal court's rules. Without evidence of undue hardship, distance alone should not defeat transfer.
- (2) Either parent objects to the transfer, or
 - (3) The tribal court declines the transfer. 25 U.S.C. § 1911 (b).

Socio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists. The parties agree that, whenever a local social service agency or any other party opposes a transfer of jurisdiction based on good cause, such party has the burden of establishing good cause not to transfer and must provide a written explanation of its opposition to the tribe(s) and to the parties who support the transfer. See Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,595 at C.3(b) (i) – (iv), (c), (d) (Nov. 26, 1979) (as modified).

4. Intervention

In any state court proceeding, for the foster care placement of, or termination of parental rights to an Indian child, the Indian custodian of the child, and the Indian child's tribe, shall have the right to intervene at any point in the proceeding pursuant to 25 U.S.C. § 1911(c); Minn. R. Juv. Protection P. 21.01, subd. 1 (c).

5. Full Faith and Credit for Public Acts, Records, and Judicial Proceedings of Tribes

"The United States, every state, every territory or possession of the United States, and every Indian tribe, shall 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 U.S.C. § 1911(d). The Department recognizes its responsibility to adhere to this mandate.

6. Adoption and Safe Families Act

The parties understand that states must comply with both the Adoption and Safe Families Act and the Indian Child Welfare Act. A provision of the Adoption and Safe Families Act recognizes that the provision does not "affect the application of the Indian Child Welfare Act." 42 U.S.C. § 674(d)(4). In addition, the Department of Health and Human Services has explained that its regulations implementing the Adoption and Safe Families Act do not supersede the Indian Child Welfare Act requirements. See 65 Fed. Reg. 4029 (January 25, 2000); see also 42 U.S.C. §§ 622 (b) (11) and 675 (5)(E); 45 CFR 1356.21 (i).

7. Inter-Ethnic Adoption Provision

The Multi-Ethnic Placement Act and its amendments, known as the Inter-Ethnic Adoption Provision, shall not be construed to affect the application of the Indian Child Welfare Act. 42 U.S.C. § 1996b(3) (2006).

D. INTERPRETATION OF AGREEMENT

This Agreement shall be liberally construed so as to achieve a result consistent with the policy and intent of the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act and the following placement preferences:

1. Indian children should be kept with their families;
2. Indian children who must be removed from their homes should be placed within their own families and Indian tribe(s);
3. The Department shall follow the tribal order of placement preferences consistent with 25 U.S.C. § 1915(c).

Any ambiguity in this Agreement shall be resolved in favor of a result that is most consistent with these placement preferences.

The phrase "and/or", which is used throughout this Agreement as a conjunction between "designated tribal representative" and "qualified expert witness" is not meant in any way to imply that the "designated tribal representative" can be excluded in favor of a "qualified expert witness." The phrase is used solely as a matter of convenience, as there may be times that the "designated tribal representative" and the "qualified expert witness" are the same person, and there may be times when both participate.

In calculating timelines under this Agreement, if no specific reference is made to the inclusion or exclusion of holidays and weekends, the following rules will apply: Saturday, Sunday, and holidays shall be excluded for computation when the period of time is less than seven (7) days. When the period of time is seven (7) days or more, Saturdays, Sundays, and holidays shall be included in the computation unless the Minnesota Indian Family Preservation Act dictates otherwise.

E. DEFINITIONS

The following definitions shall apply to this Agreement unless such application is inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

1. **"Acknowledge"** means 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. **"Adoptive Placement"** means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.
3. **"Agreement Compliance Contact"** means a person designated by a tribe and a person designated by the Department to represent her or his respective entities as a liaison between the Tribe and the Department in the implementation of this Agreement.
4. **"Active Efforts"** means a rigorous and concerted level of case work that uses the prevailing social and cultural values, conditions and way of life of the Indian child's tribe to preserve the child's family and to prevent placement of an Indian child and, if placement occurs, to return the child to the child's family at the earliest time possible. "Active efforts" sets a higher standard than "reasonable efforts" to preserve the family, to prevent the break-up of the family, and to reunify the family, as defined by Minnesota law. See Minn. Stat. § 260.012(c) (2006).

Active efforts require acknowledging traditional helping and healing systems of an Indian child's Tribe and using these systems as the core to help and to heal the Indian child and family. See 25 U.S.C. § 1912(d); Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,595 at D.2 (Nov. 26, 1979). Before the local social service agency makes a decision that will affect a child's well-being, or when an out of home placement is contemplated, the local social service agency must seek guidance from the Indian child's Tribe on how that family is structured, how the family can seek help, what family and Tribal resources are available and what barriers the family faces at that time that could threaten its preservation. The local social service agency should work with the child's Tribe and family to develop an alternative plan to placement.

Active efforts are required throughout the local social service agency's involvement with the family. The parties to this Agreement identify the following as potential active efforts:

- a. Notifying and requesting the involvement of the tribe(s) or designated tribal representative(s) to participate in the case at the earliest point possible and actively soliciting their advice throughout the case.
- b. Requesting that tribally designated representative(s) with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the tribal community, evaluate the family circumstances and assist in developing a case plan that uses tribal and Indian community resources.
- c. Providing concrete services and access to both tribal and non-tribal services including, but not limited to, financial assistance, food, housing, health care and transportation when needed. Such services are to be provided in an on-going manner throughout the case to directly assist the family in accessing and engaging in those services.

- d. Arranging visitation (including transportation assistance) that will take place, whenever possible, in the home of the parent(s), Indian custodian(s), other family members, or in some other non-institutional setting, to keep the child in close contact with parent(s), siblings, and other relatives, regardless of their age, and to allow the child and those with whom the child is visiting to have natural and unsupervised interaction whenever consistent with protecting the child's safety. When the child's safety requires supervised visitation, consulting with tribal representative(s) to determine and arrange the most natural setting that ensures the child's safety.
- e. Consulting with the tribe(s) about the availability of tribal support for the family, including traditional and customary practices as well as other existing tribal services and using these tribally based family preservation and reunification services whenever available. If no tribally based services are available, referring parent(s), Indian custodian(s), and children to other Indian agencies for services.
- f. Consulting with extended family members for help and guidance, and using them as a resource for the child. If there is difficulty working with the family, seeking assistance from an agency, including tribal social services, with expertise in working with Indian families.
- g. Using available tribal, other Indian agency and state resources that exist and that are appropriate for the child and family.
- h. Providing services to extended family members to allow them to be considered for placement of the child.

See generally Minnesota Department of Human Services, Social Services Manual, XIII-3500-3687; In re the Welfare of M.S.S., 465 N.W.2d 412 (Minn. Ct. App.1991).

- 5. **"Best Interests of an Indian Child"** means compliance with and recognition of the importance and immediacy of family preservation, using Tribal ways and strengths to preserve and maintain an Indian child's family. The best interests of an Indian child will support the child's sense of belonging to family, extended family, clan and Tribe. Best interests of an Indian child are interwoven with the best interests of the Indian child's Tribe. Best interests must be informed by an understanding of the damage that is suffered by Indian children if family and child tribal identity and contact are denied. Congress has not imposed a "best interests" test as a requirement in Indian Child Welfare Act child custody proceedings. See Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,592 at D.3. (Nov. 26, 1979). See generally Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989); In re the Adoption of M.T.S., 489 N.W.2d 285, 288 (Minn. Ct. App. 1992).
- 6. **"Case Plan"** means a written plan prepared by the local social service agency jointly with the parent (s), Indian custodian or guardian of the child; the child's tribe and in consultation with the guardian ad litem and the child's foster care providers or representative of the residential facility, and where appropriate, the child. If the child is in placement solely or in part due to the child's emotional disturbance, the mental health provider shall be included. This document should outline the requirements set forth in Minnesota Statutes sections 245.4871, subs. 19 or 21; 245.492, subd. 16; 256B.092; 256E.08; 260C.212, subd. 1; or 626.556, subd. 10, whichever is applicable; Minnesota Rules of Juvenile Protection Rule 37; and the Department of Human Services, Social

Services Manual, XIII-3500-3687. In addition, the parties agree that the focus shall be on family preservation and elimination of the issues underlying the child protection proceeding.

7. **"Child Custody or Placement Proceeding"** means foster placement, termination of parental rights, pre-adoptive placement, adoptive placement, or transfer of legal custody to a member of the Indian child's extended family, long term foster care, or any other placement determination referenced in Minn. Stat. § 260C.201 (2006). Such term or terms shall 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 proceedings of custody to one of the parents. However, as set forth in the Indian Child Welfare Act, 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 the Indian Child Welfare Act including but not limited to the transfer of legal custody of an Indian child to a member of the child's extended family.

Such terms include placements based upon juvenile status offenses. Minn. Stat. § 260.755, subd. 3 (2006). Such terms also include any third party custody or de facto custody actions wherein custody of the Indian child may be transferred to any individual other than the Indian child's parent. Minn. Stat. § 257C.02(a) (2006); Gerber v. Eastman, 673 N.W.2d 854 (Minn. Ct. App. 2004); In re the Custody of A.K.H., 502 N.W. 2d 790 (Minn. Ct. App. 1993).

8. **"Data"** means 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.
9. **"Department of Human Services"** ("the Department") means the state agency with ultimate responsibility for the provision of state child welfare services that has met the compliance requirements under P.L. 96-272 and received certification by the federal government.
10. **"Designated Tribal Representative"** means an individual designated in writing by the Indian child's tribe to represent the tribe in child custody proceedings.
11. **"Domicile"** means a person's true, permanent home, or the place to which she or he intends to return even though actually residing elsewhere; a child's domicile is determined by the domicile of her or his 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 in connection with a certain state of mind concerning one's 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).
12. **"Emergency"** means 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.
13. **"Extended Family"** shall be 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 step-parent. 25 U.S.C. § 1903(2).

14. **"Foster Placement"** means any and all initial and subsequent actions involving the removal of 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 the parental rights have not been terminated.
15. **"Good Cause Not to Follow the Placement Preferences"** For the purposes of foster care, pre-adoptive, adoptive placement or other permanency placements, a determination of good cause not to follow the order of preference set out in the Act should be limited to a finding by the court of one or more of the following considerations.
 - a. The request of the biological parent(s) or child, when the child is of sufficient age where appropriate. If the sole basis for the preference of the parent or child is to avoid application of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, the court should reject the preference.
 - b. The extraordinary physical or emotional needs of the child requiring highly specialized treatment services as established by the testimony of a qualified expert witness and, if necessary, an expert witness as defined herein.
 - c. The unavailability of suitable families for placement, after a diligent search consistent with the active efforts standard has been completed for families meeting the preference criteria.

See The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,595 at F.3 (Nov. 26, 1979) (as modified).

Bonding or attachment to a foster family alone without the existence of any of the above conditions is not good cause to keep an Indian child in a lower preference or non-preference home. See In re Adoption of M.T.S., 489 N.W.2d 285 (Minn. Ct. App. 1992); Department of Human Services, Social Services Manual, XIII-3521.

The burden of establishing the existence of good cause to modify placement preferences shall be on the party urging that the preferences not be followed. See The Bureau of Indian Affairs Guidelines, 44 Fed. 67,584, 67,595 at F.3 (Nov. 26, 1979).

16. **"Good Cause Not to Transfer Jurisdiction to Tribal Court"** shall have the meaning set forth above in Part I.C.3 (Transfer to Tribal Courts).
17. **"ICWA"** means the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963.
18. **"Indian Child Welfare Act Contact Person"** means a person(s) designated by a tribe in writing to receive formal notice regarding Indian child custody or placement proceedings. The parties agree this should include designation of the person's title, in the event that the designated representative is no longer in that position.
19. **"Imminent Physical Damage or Harm"** means a threat of immediate physical injury; emotional harm to a child is not sufficient.
20. **"Indian"** means any person who is a member of any Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in the Alaska Native Claims

Settlement Act. 43 U.S.C. § 1606; 25 U.S.C. § 1903(3); Minn. Stat. § 260.755, subd. 7 (2006).

21. **"Indian Child"** means any unmarried person who is under age eighteen and is (a) either a member of an Indian tribe; or (b) eligible for membership in an Indian tribe. Minn. Stat. § 260.755, subd. 8 (2006). 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.

The parties agree that this statutory definition of an Indian child applies without exception in any child custody proceeding. Whether an Indian child is part of an Indian family or has established a connection to her or his tribe is not a consideration in determining the applicability of the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act to an Indian child. The parties to this agreement explicitly reject any existing Indian family exception or doctrine.

A determination by the tribe that a child is a member or eligible for membership in the tribe is conclusive. The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, 67,586 (Nov. 26, 1979). *In re S.N.R.*, 617 N.W. 2d 77, 84 (Minn. Ct. App. 2000).

22. **"Indian Child's Tribe"** means 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, the determination of the child's tribe is best made by the respective tribes with whom the child is a member or eligible for membership. If that determination has not been made, or if a dispute exists between the tribes, the Court shall designate the tribe with which the child has more significant contacts. Such a determination shall not prohibit any other interested tribes from participating in child custody proceedings. Any such participating tribe should have access to information regarding the family. *See* Minn. Stat. § 260.755, subd. 9 (2006); 25 U.S.C. § 1903(5). The extent of the child's contact with the Tribe shall not be used to challenge a determination that the child is an Indian child.
23. **"Indian Custodian"** means 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 U.S.C. § 1903(6); Minn. Stat. § 260.755, subd. 10 (2006).
24. **"Indian Organization"** means any group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indian. 25 U.S.C. § 1903(7). *See also* Minn. Stat. § 260.755, subd. 11 (2006).
25. **"Indian Tribe"** means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c). 25 U.S.C. § 1903(8); *see also* Minn. Stat. § 260.755, subd. 12 (2006).
26. **"Legal Custody"** means 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 local social service agency, court services agency, or individual pursuant to a court order.

27. **"Local Social Services Agency"** means the local agency under the authority of the county welfare or human services board or county board of commissioners that is responsible for human services. Minn. Stat. § 260.755, subd. 13 (2006).
28. **"MIFPA"** means the Minnesota Indian Family Preservation Act. Minn. Stat. §§ 260.751 to 260.835 (2006).
29. **"Parent"** means any biological parent or parents of an Indian child or any 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 an unmarried father whose paternity has not been acknowledged or established. 25 U.S.C. § 1903(9); Minn. Stat. § 260.755, subd. 14 (2006).
30. **"Permanency Planning for Indian Children"** means a process designed to help Indian children live in their own families as defined by the Indian Child Welfare Act. This process should offer continuity of relationships with nurturing parents, extended family members regardless of age, and tribal caregivers. This process is designed to provide the child an opportunity to develop and maintain lifetime familial relationships. When an Indian child is unable to live with her or his own parents or Indian custodians, permanency planning may include transfer of permanent legal and physical custody to a relative, long term foster care, customary/cultural adoptions, or adoption in District Court. Customary/cultural adoptions include traditional adoptions recognized by tribal practice, custom or tradition. The parties to this Agreement acknowledge that the traditions, customs and values of many tribes do not accept actions intended to terminate parental rights or other actions that can effect a severing of the parent/child relationship. The parties acknowledge that all permanency options have the potential to extinguish the relationship between the parent and the child.
31. **"Placement Preferences"** means the following: an Indian child's tribe's order of preference by resolution, public acts, records or judicial proceedings, shall be followed by the agency or court effecting the placement so long as the placement is the least restrictive setting appropriate to the particular needs of the child. 25 U.S.C. § 1915(c).

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting that most approximates a family and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to her or his home, taking into account any special needs of the child.

- a. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement in the following descending order:
- (1) a member of the Indian child's extended family;
 - (2) a foster home licensed, approved, specified or acknowledged by the Indian child's tribe;
 - (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;
 - (4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs. 25 U.S.C. § 1915(b).

- b. In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement in the following descending order:
- (1) a member of the Indian child's extended family;
 - (2) other members of the Indian child's tribe;
 - (3) other Indian families. 25 U.S.C. § 1915(a).

An out of home placement of an Indian child with her or his 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. See Department of Human Services, Social Services Manual, XIII-3500-3687.

32. "Pre-Adoptive Placement" means 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. 25 U.S.C. § 1903(1)(iii).

33. "Qualified Expert Witness" The Indian Child Welfare Act prohibits foster care placement or termination of parental rights unless a district court determines by clear and convincing evidence and evidence beyond a reasonable doubt, respectively, after hearing testimony of qualified expert witnesses, 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. See 25 U.S.C. § 1912 (e) and (f). In the spirit of this Agreement, the State encourages counties to seek a qualified expert witness from a list of qualified expert witnesses that the Indian child's Tribe has designated. The qualifications of a tribally designated qualified expert witness shall not be subject to challenges in Indian child custody proceedings.

a. When use of a tribally designated qualified expert witness is not possible, the State and Tribes recognize that persons with the following expertise and capacities will meet the requirements for a qualified expert witness. While not every qualified expert witness will demonstrate knowledge and understanding of each of these criteria, the parties encourage consideration of these criteria when establishing qualified expert witnesses to offer testimony concerning whether continued custody of the child by the parent or Indian custodian is likely to result in serious physical or emotional damage to the child:

- (1) Membership in the child's tribe or significant experience with the child's tribe;
- (2) Knowledge and understanding of the meaning of membership in the child's tribe;
- (3) Knowledge and understanding of the meaning of clan relationships and extended family relationships in the child's tribe;
- (4) Knowledge and understanding of the meaning of traditional and contemporary child rearing practices within the child's tribe;

- (5) Knowledge and understanding of traditional disciplinary measures used within the child's tribe;
 - (6) Knowledge and understanding of ceremonial and religious practices and cultural traditions within the child's tribe;
 - (7) Knowledge and understanding of medicine and traditional healing of the child's tribe; and
 - (8) Knowledge and understanding of the effect of acculturation or assimilation within the child's tribe.
- b. The parties agree that the criteria above inform, and do not supplant, current Minnesota law, which defines a "qualified expert witness" as:
- (1) 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;
 - (2) 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
 - (3) a professional person who has substantial education and experience in the area of her or his specialty and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community.

See In re the Custody of S.E.G., 521 N.W.2d 357, 364-65 (Minn. 1994) (citing with modification the Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,595 at D.4.(b)); see also Minnesota Rules 9560.0221, subpart 3.G.(2005).

- 34. "**Reservation**" means Indian Country as defined in 18 U.S.C. § 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 U.S.C. § 1151; 25 U.S.C. § 1903(10); Minn. Stat. § 260.755, subd. 18 (2006).
- 35. "**Residence**" means 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 then the tribal definition shall control.
- 36. "**Secretary**" means the Secretary of the Interior. 25 U.S.C. § 1903(11); Minn. Stat. § 260.755, subd. 19 (2006).
- 37. "**State Court**" means any juvenile or family court of the State of Minnesota that has jurisdiction over a child custody proceeding.
- 38. "**Termination of Parental Rights**" ("TPR") means any action resulting in the termination of the parent-child relationship. 25 U.S.C. § 1903(1)(ii). No order for involuntary termination of parental rights shall be made in the absence of a

determination, supported by evidence beyond a reasonable doubt, including testimony of a qualified expert witness or qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(f). In addition, the petitioner must prove beyond a reasonable doubt one or more grounds for termination of parental rights pursuant to state statute. Minn. Stat. § 260C.301 (2006). Termination of parental rights includes any voluntary or involuntary action as part of a step-parent adoption and an adoption consent pursuant to Minn. Stat. § 259 (2006); see also 25 U.S.C. § 1913.

39. **"Transfer of Permanent Legal Custody to a Relative"** means the permanent transfer of legal and physical custody of an Indian child to an extended family member. Minn. Stat. § 260C.201, subd. 11(d) (2006).
40. **"Trial Home Visit"** means the child is returned to the care of the parent or Indian custodian from whom the child was removed for a period not to exceed six months. Minn. Stat. § 260C.201, subd. 1(3) (2006).
41. **"Tribal Court"** means 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 that is vested with authority over child custody proceedings. 25 U.S.C. § 1903(12). 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.
42. **"Tribal Social Services Agency"** means a tribal program or a tribe's agent however named, with responsibility for provision of social services to Indian families and children. Minn. Stat. § 260.755, subd. 21 (2006).
43. **"Voluntary Foster Placement"** means an out of home foster placement by a social services agency away from the home of the parent, Indian custodian or legal guardian where a parent may have the child returned upon demand. Voluntary foster placement requires court certification as well as a signed voluntary placement agreement that specifies the child's legal status and spells out the rights and obligations of the child, parent(s) or Indian custodian and agency, including the duty of the agency to return the child upon demand. The consent must be executed in writing and recorded before a judge in a court of competent jurisdiction and must be accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. 25 U.S.C. § 1913 (a), (b); Minn. Stat. § 260.755, subd. 22 (2006).
44. **"Voluntary Relinquishment"** means 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 recorded before a judge in a court of competent jurisdiction and must be accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. 25 U.S.C. § 1913.

45. **"Ward of Tribal Court"** means 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.

PART II. GENERAL AGREEMENT IMPLEMENTATION PROVISIONS

A. INDIAN CHILD WELFARE ACT and MINNESOTA INDIAN FAMILY PRESERVATION ACT COLLABORATION EFFORTS

The parties agree to meet annually by June 30th and thereafter to address systemic issues related to compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act and to address possible legislative resolutions.

At this meeting, the parties will review possible remedial legislation to strengthen compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act and enforcement of those Acts based on all appropriate and relevant data and statistics that the parties have shared prior to June 30th of each year. If a legislative agenda is agreed upon, the parties will consult with each other on the preparation of legislative proposals. Enforcement mechanisms that may be discussed include legislative proposals, rule revision, Department bulletins or training, review of Indian foster and adoptive home training and recruitment efforts, and the development of the registry of Indian foster and adoptive homes.

B. PURCHASE OF SERVICES

As provided by the Minnesota Indian Family Preservation Act, if permitted by law and existing funding allocations, the Department agrees to purchase, at the request of a tribe, "child welfare services" (as defined in 42 U.S.C. § 625(a)(1)) and "social services" (as defined in 42 U.S.C. § 1397), by contract from the tribe, Indian organization or any other organization recognized and approved by a tribe as providing culturally appropriate child welfare services to Indian families. In addition, if requested by the tribe, and required by law and permitted by existing funding allocations, the Department also agrees to purchase by contract, from these entities, all "other services" provided by the Department to or on behalf of Indian children and families. This agreement also recognizes the possibility that the State may provide a block grant to a tribe for the provision of culturally appropriate services to Indian children. In compliance with all federal and state laws and regulations governing the utilization of funds provided through purchase of services contracts, the tribe from whom services are purchased will provide such services to or on behalf of Indian children and families. All of the agreements set forth in the foregoing paragraph are subject to state and federal law and available funding resources.

Purchase of services contracts shall be separately negotiated agreements between the Department and each tribe. These contracts will be renegotiated as specified in the contract. The Department agrees to provide the tribes a timely opportunity to participate in the development of the biennial budget proposals. Budget formulation participation may be limited to matters pertinent to securing funds to finance the Department's purchase of services contracts with the tribes. However, the Department will solicit input from the tribes on all issues that are related to securing funds to finance the Department's purchase of services contracts with the tribe(s).

Executed purchase of services contracts will be available from the Department upon request. Should any provisions of this Agreement and the contracts conflict, the provision of the contracts shall govern, but shall not diminish the protections afforded to Indian children as set forth in this Agreement. If a conflict occurs, this Agreement shall be amended by consent of both the Department and the Tribes to reflect the provisions set forth in the contracts.

C. CONTINUING DEPARTMENT RESPONSIBILITY FOR SERVICES

In addition to services specifically established for Indian families in this Agreement or otherwise, the Department recognizes the responsibility of the State and local social service agencies to make

available to Indian families all of the other services available to any other family in the circumstances covered by this Agreement. Existing services must not be reduced because of the availability of services through this Agreement. The parties agree that local social service agencies must honor tribal court orders for placement and provision of services in compliance with Title 25 of the United States Code, section 1911(d), which requires every state to give full faith and credit to the public acts, records and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings. The exercise of tribal court jurisdiction does not mean a withdrawal, decrease, or denial of county social services.

D. AGREEMENT COMPLIANCE CONTACT

At the time of signing, each party to this Agreement shall designate an Agreement Compliance Contact person for purposes of implementing this Agreement.

The name(s) of the contact person(s) for the tribe(s) or her or his designee(s) will be provided to the Department in writing, and this information will be updated by the tribe(s) upon any change.

A supervisor or her or his designees within the Minnesota Department of Human Services, or Child Safety and Permanency Division, shall be the Department's contact person. The Department shall notify the tribes in writing of the identity of the Department's contact person, and this information will be updated by the Department upon any change.

E. DEPARTMENT'S SOCIAL SERVICE MANUAL

To reflect the changes made to this Agreement in 2007, the Department, in consultation with the Tribes signing this Agreement, will review and revise the current section entitled "American Indian Children" in the Department's Social Services Manual (XIII-3500 through XIII – 3687). Such revision will take place within 120 days after this Agreement is signed. The updated Manual shall be available electronically.

F. CONFIDENTIALITY OF RECORDS/INFORMATION

Any obligation under this Agreement by the Department to disclose or transmit confidential records, documents, or information to the tribe(s) or to involve the tribe(s) in case planning activities that necessitate disclosure of private or confidential information is strictly conditioned upon:

1. Federal or state laws that require or authorize the Department or the local social service agency to disclose private or confidential information to the tribe(s), it being understood that in order to achieve the purposes of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Action, a tribe must have access to all data including confidential information regarding an individual with respect to its members; or
2. Entry of a state or tribal court order, with jurisdiction over the parties and the subject matter, which authorizes the disclosure of confidential information to tribes.

If joint assessment or investigation do not occur, and when a local social service agency or private child placing agency determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and requires that continued involvement of the agency with the child for a period in excess of thirty days, the agency shall send notice of the condition and of the initial steps taken to remedy it to the Indian child's tribal social service agency within seven days of the determination. Minn. Stat. § 260.761, subd. 2 (2006). At this time and any subsequent stage of its involvement with an Indian child, the agency shall, upon request, give the tribal social services agency full cooperation including access to all files concerning the child.

G. QUALIFIED EXPERT WITNESSES

In all child custody or placement proceedings involving an Indian child, a qualified expert witness shall be an individual who meets the requirements set forth in the definition herein. The parties agree that a tribe's choice of qualified expert witnesses is solely a tribal determination and may include more than one qualified expert witness who will not be subject to challenge by the Department. Each tribe that participates in this Agreement agrees to maintain its list of qualified expert witnesses. The tribe's list of qualified expert witnesses will be a resource available to the court regardless of the tribe's determination to take part in a proceeding. Other parties may also propose qualified expert witnesses.

As distinguished from a qualified expert witness in an Indian Child Welfare Act/Minnesota Indian Family Preservation Act proceeding, an expert witness means a person as defined in Minnesota Rules of Evidence 702 whose testimony does not substitute for the testimony of a qualified expert witness under the Indian Child Welfare Act as defined herein.

H. APPLICABILITY OF AGREEMENT TO STATE LICENSED CHILD PLACEMENT AGENCIES

The Commissioner of Human Services supervises the public human services and child welfare programs, administered by local social service agencies, including private child placing agencies. Minn. Stat. § 256.01, subd. 2(c) (2006). A local social services agency shall make the services of its public child welfare program available as required by law, the Commissioner, or the Courts. Local social service agencies shall also cooperate with other agencies, public, private or Tribal, in dealing with the problems of children and their families. The duties of the local social service agencies shall be performed in accordance with the standards and rules that may be promulgated by the Commissioner to achieve the purposes intended by law and to comply with all relevant requirements of federal law, including the Indian Child Welfare Act; the Minnesota Indian Family Preservation Act and this Agreement. See Minn. Stat. § 393.07 (2006).

I. COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT, THE MINNESOTA INDIAN FAMILY PRESERVATION ACT AND THIS AGREEMENT

1. Department Staffing

To the extent that funding is available, the Department agrees to establish or to maintain one or more positions that shall be filled by a qualified person with knowledge of and experience with tribal identities in Minnesota and Indian child welfare. The Department will include representation from the Indian Child Welfare Advisory Council in the hiring process. The job duties will include strengthening and monitoring services to American Indian children and families provided by the local social service agencies and private child placement agencies and ensuring compliance with the requirements of the Indian Child Welfare Act, Minnesota Indian Family Preservation Act and this Agreement. Such compliance shall be monitored in a manner that is mutually acceptable to the individuals referred to in Part II, Section D of this Agreement, as the agreement compliance contact.

2. Department Compliance Requirements

- a. Minnesota Statutes § 256M.20, subd. 3, defines the responsibility of the Department to establish and to maintain a monitoring program that will reduce non-compliance with federal laws and federal regulations by county agencies that might result in federal fiscal sanction.

- b. P.L. 103-432 mandates the State to outline the measures that it will take to assure compliance with the Indian Child Welfare Act. In complying with P.L. 103-432, the Department shall adhere to GOAL V of the TITLE IV-E State Plan, "MAINTAIN AND STRENGTHEN COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT," emphasizing Objective E, numbers 3 and 6.
- c. The Department further agrees to maintain quality assurance through the Child and Family Services Review Process, as set forth in Minn. Stat. § 256.017. In cases involving tribal children, services reviewed will include notification to tribe and adherence to tribal placement preferences. In addition to interviewing clients and their families, the process will include assessments on compliance from tribal representatives and tribal service providers to gauge the agency's diligence in meeting the needs of tribal children and to promote positive outcomes. The final review report will be provided to the county and posted on the Department's website.

3. Problem Solving Arenas for Issues of Non-Compliance

- a. Resolution Process. The parties agree that prompt tribe-to-state and tribe-to-county resolution of problems that affect tribal family receipt of services is an effective way to ensure compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act. Accordingly, when a report of non-compliance is made, the Department, through its Indian Child Welfare Program Consultant, and the affected Tribe, through its designated tribal representative, will take immediate steps to communicate with each other about the situation and to begin a process to resolve the problem. Anyone may make a report of non-compliance.
 - (1) Steps in Resolution Process. When a complaint is made to the Indian Child Welfare Program Consultant, he or she will, within three business days of receipt of such report, contact the designated representative of the affected Tribe, the reporter, and the county agency to notify them of the report. The Indian Child Welfare Program Consultant will then promptly gather from the reporter, the affected Tribe, and the county agency, the pertinent information necessary to resolve the dispute. Such information will be promptly shared with the tribal representative from the affected Tribe and with the other parties involved in resolving the dispute. The Indian Child Welfare Program Consultant will provide the parties copies of the laws applicable to the matter. In direct consultation with the tribal representative from the affected Tribe, the Indian Child Welfare Program Consultant may schedule conference calls or meetings at an agreed upon time, allowing all parties sufficient time to review all pertinent information. The parties agree to maintain the confidentiality of the information shared.
 - (2) Documentation of Dispute Resolution. If the parties reach resolution of the dispute, the Indian Child Welfare Program Consultant will document the problem and resolution, and provide that documentation to all the parties to the dispute, including the reporter. Summaries of the problems addressed and their agreed-upon resolutions shall be shared by the Department with the Tribes, the Ombudsperson for American Indian Families, and the American Indian Child Welfare Advisory Council.

- b. Other Existing Mechanisms to Address Non-Compliance. In addition to the resolution process described above, other avenues exist to address issues of non-compliance. These alternatives include directing allegations of non-compliance to the Ombudsperson for American Indian Families, using the fair hearing process created by Minnesota Statutes § 256.045, or initiating or pursuing legal remedies or resolutions.

J. INTER-AGENCY COORDINATION

The tribes and the Department agree to coordinate with other agencies affected by the terms of the Agreement. Such coordination includes training, on-going consultation, development and negotiation of agreements with other agencies, and other appropriate measures to ensure that this Agreement is understood and effectively implemented. To help ensure coordination, understanding, and implementation of this Agreement, the Department strongly encourages local social service agencies, whose service areas include a tribe or who have at least one Indian child on their caseload, to invite tribal representation on their multidisciplinary child protection team. The Department will continue to provide such encouragement through correspondence and training, and in the Department's Social Services Manual informing local social service agencies of the importance of including tribal representation on the multidisciplinary child protection team.

K. TRAINING

1. The Department/Local Social Service Agency/Private Agency Staff Training

The Department will continue to provide training on the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act and this Agreement in its CORE child protection training under Minn. Stat. § 626.5591. The Department will also provide training regarding the Department's Social Services Manual and other relevant training to strengthen services to Indian children and families. The Department will continue to invite tribal participation on the Minnesota Child Welfare Training Steering Committee to jointly develop an annual plan for on-going training.

- a. Indian child welfare services training will include but not be limited to the following areas:
 - (1) Purposes of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act and this Agreement;
 - (2) Child Welfare Investigations and Assessments;
 - (3) Procedures to be followed to implement this Agreement, the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act;
 - (4) Notice requirements;
 - (5) Provision of protective services;
 - (6) Provision of emergency foster care placement services;
 - (7) Legal requirements to effect involuntary foster care placement or termination of parental rights;
 - (8) Voluntary foster care placement and termination of parental rights;
 - (9) Placement preference requirements;

- (10) Active efforts requirements;
 - (11) Qualified expert witness requirements;
 - (12) Records maintenance;
 - (13) Adoption of Indian children;
 - (14) Tribes in Minnesota; and
 - (15) Information on government to government relationship(s), sovereignty issues, P.L. 83-280.
- b. At a minimum, the knowledge and understanding required to accurately assess the risk to an Indian child should include, but not be limited to, the impact of the following factors:
- (1) The tribal values, beliefs, religion, customs, ways of being and family recognition system of the child's tribe;
 - (2) Behaviors and responses stemming from traditional ways of life through assimilated ways of life;
 - (3) Socio-economic context of the care and condition of the family's home and children: Importance of sharing resources with extended family;
 - (4) Reality of negative historical experience of Indian people toward non-Indian governmental systems;
 - (5) Different cultural requirements of social interaction including reticence and passivity indicating respect;
 - (6) Recognizing tribal family retention of traditional disciplinary methods and extended family clan support; and
 - (7) Condition of parenting skills due to historic isolation and abuse.

The Department agrees to notify the tribe of child welfare services training provided by the Department or others for staff for local social service agencies, private child placing agencies, and tribal child welfare services.

2. Judicial System/Law Enforcement Training

The Department and the tribes agree to offer, as possible, cooperative on-going training programs to educate judges, lawyers, law enforcement personnel, advocates, guardians ad litem, and probation officers who are involved in Indian child custody proceedings, about the provisions of this Agreement, the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and the special cultural and legal considerations pertinent to such proceedings.

3. Payment for Training

The Department agrees to seek grants and/or reimbursement under Title IV-E, the Child Abuse Prevention and Treatment Act and other federal programs, for the training specified in this Agreement.

L. WAIVER/AMENDMENTS

1. Waiver

A duly designated representative of the Department and a tribe, on a case-by-case basis, may agree in writing to waive any of the provisions of this Agreement. The waiver shall identify the provision to be waived, the case or circumstances to which the waiver is applicable, the reason for the waiver and the duration of the waiver.

Any provision of this Agreement may be waived generally by consensus between the Department and the tribes, without regard to a particular case or circumstance. A general effect waiver of any provision(s) of this Agreement shall take effect upon the date the parties sign a written agreement to the waiver. The waiver may be indefinite or may be for a specified length of time.

2. Amendments

The parties may amend or modify this Agreement and/or procedures manual at any time upon mutual consent of the Department and the tribes. Amendments shall be effective when approved in the same manner as required for approval of the original Agreement, unless the parties provide otherwise. All amendments shall be attached as appendices to this Agreement.

M. RESOLUTION OF DISPUTES REGARDING INTERPRETATION OF THIS AGREEMENT

The parties agree that, upon the request of any party, disputes arising between any signatory Tribe and the Department concerning the application and interpretation of this Agreement shall be referred to a duly designated representative (or representatives) of the Department and the Tribe for a good faith effort to resolve the dispute. If a resolution is reached, the decision shall be binding upon the Department and upon the participating Tribe. Notice of the dispute and ultimate resolution shall be shared with all of the other signatory Tribes, but none of the Tribes who did not participate in the dispute resolution process shall be bound by the decision. Use of this dispute resolution process does not affect in any manner the abilities of any party to use the waiver and termination remedies provided for in Part II, Sections L and N of this Agreement.

If a state or federal law is amended, neither the Tribe(s) nor the Department will be required to comply with any section of this Agreement that would be out of compliance with, or not required by existing law.

N. TERMINATION OF AGREEMENT

This Agreement shall remain in effect until revoked by one of the parties. The termination of the Agreement by the State with a particular Tribe or by a Tribe shall not invalidate this Agreement as to the other tribes.

This Agreement or any part thereof may be revoked upon 180 days written notice to the other party. The notice shall state the reasons for and the effective date of the revocation.

Prior to notification or revocation, a party considering revocation shall, whenever possible, seek to cooperatively explore with the other party ways in which to avoid revocation.

Prior to the effective date of any revocation, the parties agree to cooperate in assuring the revocation will not unnecessarily result in a break in service or in disruption of the services provided to Indian children and families.

PART III. FUNDING ISSUES

A. FOSTER CARE MAINTENANCE PAYMENT

It is the position of the Department and the Tribes that, to the extent an Indian child is otherwise eligible for foster care maintenance payments under Minnesota law, the local social service agency shall pay for the cost of foster care of Indian children who are placed by a state or tribal court or through a voluntary placement agreement in licensed foster homes or homes licensed or approved by the Tribes. It is the position of the Department and the Tribes that the local social service agency's obligation is subject to the same eligibility standards and rates of support applicable to other children for whom the local social service agency pays foster care. In any case where the tribal court orders placement through a local social services agency, the court shall provide to the local agency notice and an opportunity to be heard regarding the placement.

Determination of the county of financial responsibility for the placement shall be made by the local social service agency in accordance with Minn. Stat. § 256G.02, subd. 4 (2006). Disputes concerning the county of financial responsibility shall be settled in the manner prescribed in Minn. Stat. § 256G.09 (2006). Minnesota Department of Human Services Bulletin No. 04-68-10 "County Responsibilities for Children Under Tribal Court Jurisdiction" (Nov. 24, 2004). This responsibility also applies to local social service agencies that serve the Red Lake Nation and the Bois Forte Band of Chippewa or any tribal jurisdiction wherein the State legislature has enacted a retrocession of its Public Law 280 jurisdiction to the United States.

B. ADOPTIVE PLACEMENT COSTS

Subject to the rules of the Commissioner and the provisions of Minn. Stat. § 259.67, subd. 7, a child-placing agency licensed in Minnesota or any other state, or local or tribal social services agency shall receive a reimbursement from the Commissioner equal to 100 percent of the reasonable and appropriate cost of providing adoption services for an Indian child eligible for reimbursement of costs pursuant to Minn. Stat. § 259.67, subd. 7, up to the statutory maximum. Adoption services may include adoptive family recruitment, counseling, and special training when needed. Agencies eligible for reimbursement for adoption services as well as eligibility criteria for a child, are described in Minn. Stat. § 259.67, subd. 7.

A licensed child-placing agency or local or tribal social service agency, seeking reimbursement under this subdivision shall enter into a reimbursement agreement with the Commissioner before providing adoption services for which reimbursement is sought. No reimbursement under this section shall be made to an agency for services provided prior to entering a reimbursement agreement. Separate reimbursement agreements shall be made for each Indian child and separate records shall be kept on each child for whom a reimbursement agreement is made. Minn. Stat. § 259.67, subd. 7. Funds encumbered and obligated under such an agreement for the child remain available until the terms of the agreement are fulfilled or the agreement is terminated.

Children certified as eligible for adoption assistance who are protected under the Indian Child Welfare Act should, whenever possible, be served by the tribal governing body, tribal courts, or a licensed Indian child-placing agency.

C. ADOPTION ASSISTANCE PAYMENT

The Department, in coordination with the tribe's social services agency, agrees to provide adoption assistance payments to adoptive parents who have obtained the adoption of a child through a tribal court, provided that the child and the adoptive parents meet all of the program

eligibility requirements set forth in 42 U.S.C. §§ 670 through 679a and the requirements of Minn. Stat. § 259.67, as well as other applicable federal and state regulations.

D. FUTURE FUNDING

The Department agrees to continue to work with the tribes regarding social service funding issues and re-evaluate future funding possibilities.

PART IV. MISCELLANEOUS PROVISIONS

A. REVIEW OF FOSTER CARE AND PREADOPTIVE PLACEMENT

The local social service agency is required by P.L. 96-272, Social Security Act, Title IV, Part E., § 475(5)(B) to conduct an administrative review of all voluntary and involuntary foster placements and preadoptive placements of Indian children not less than every six months unless such reviews are being conducted by tribal or state court. In any review of the foster or preadoptive placement of an Indian child, the local social service agency will notify the tribe, parent(s), Indian custodian(s), extended family members, and the child if over the age of twelve (12). Notice must be sent at least fourteen (14) days prior to the review. Each tribe in which the child is eligible for membership will receive notice and has a right to participate in the review and shall have access to all files and documents pertaining to placement. A child over the age of twelve also shall have a right to participate in the review. In reviews of foster 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.

At a minimum, the review will evaluate the suitability of the foster or preadoptive placement, including but not limited to the suitability of the placement under the Indian Child Welfare Act, the necessity of continuing the child in foster or preadoptive placement, and the prospect for terminating the placement and returning the child to the custody of the parent(s) or Indian custodian(s) or permanent placement of the child. The review will also evaluate the suitability and effectiveness of the services rendered to the child and family as they reflect the family's Tribal values and beliefs, and efforts made to insure tribally appropriate contact with parent(s), Indian custodian(s), siblings, and extended family, regardless of age.

B. RECRUITMENT/REGISTRY OF FOSTER AND ADOPTIVE HOMES

1. Recruitment

The Department and the tribe(s) agree to cooperate to develop a plan to recruit Indian foster and adoptive homes. The recruiting plan may include plans to utilize the media, Indian organization resources, mailing to members of such organizations, door-to-door solicitation within Indian communities, national and regional adoption resource exchange, and other means likely to succeed in securing Indian foster and adoptive homes for Indian children. The Department and Tribes shall provide training to assist potential Indian foster care providers to comply with tribal or state licensing standards for foster or adoptive homes. Each Tribe will determine how it may share its list of licensed homes, including tribal affiliation, name and county of residence, with the Department. The agency attempting to place a child with that family may contact the tribal licensing agent to request additional information regarding the family.

2. Assessment of Prospective Foster or Adoptive Homes

The parties recognize that an Indian child's tribal identity is a crucial element of her or his well being and must be protected when a child may be removed from the child's home. The parties agree that an assessment of the ability of a prospective foster parent to parent an Indian child shall take into account the following:

- a. Motivation for application at this time;

- b. Existing family relationships, attitudes and expectations regarding own children and parent-child relationships, especially where such existing attitudes and relationships might affect the foster child;
- c. Personal characteristics necessary to provide continuity of care throughout the child's need for placement:
 - (1) Ability to accept Indian child's relationship with own parent(s);
 - (2) Willingness to help Indian child learn about the child's situation;
 - (3) Willingness to ask what a foster parent needs to know to be helpful to the Indian child;
 - (4) Capacity to avoid attribution to a person based on assumptions about child's background;
 - (5) Ability to acknowledge that attribution and understand why it can be wrong;
 - (6) Understanding how culture affects the way people act or react differently to the same situation or how they think about other people or their property or values;
 - (7) Capacity to discern that an Indian child is experiencing needs that the child is unable to communicate; and
 - (8) Expectation of how people should react to authority, generosity, or kindness.
- d. Attitudes of significant members of extended family regarding child placement;
- e. Ability to love and accept child as the child is;
- f. Capacity of parent(s) to provide for foster child's needs while giving proper consideration to own children;
- g. Foster parents' own children's attitudes toward accepting an Indian foster child;
- h. Ability to relate to natural parent(s) who may have neglected or abused the child; and
- i. Understanding that there may be multiple means to convey displeasure with the conduct of an Indian foster child.

3. Registry

The Department agrees to establish and maintain a registry of all Indian homes licensed by the State of Minnesota, licensed or approved by a tribe, and available to receive Indian children for foster care or adoption. The registry will identify the name, address, tribal affiliation of the home, whether the home is licensed or approved by the Department or a tribe, and whether the home is available for foster or adoptive placement or both. The registry will also identify for each home any preconditions to the acceptance of a child, such as, willingness to only accept a relative, a member of the same tribe, a child without

mental or physical handicap, or that the home has indicated no preconditions. Upon request, a tribe shall have access to any of the records maintained as part of the registry in accordance with the Data Practices Act and other applicable Minnesota Laws.

C. INTER-STATE COMPACT ON THE PLACEMENT OF CHILDREN

Whenever the Department is considering whether to place an Indian child pursuant to the Inter-State Compact on the placement of children, the Department will follow the provisions of the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act and this Agreement, including placement preferences requirements for Indian children.

1. Indian Children Being Sent From Other States

If the transfer forms indicate that the child is Indian, the Department will not approve the transfer or placement until documentation is furnished stating that the child's tribe has been notified.

In responding to the sending state's request, the Department shall be governed by the best interests of the Indian child as set forth in this Agreement. If the child is an Indian child, and the proposed placement is not within the order of preference identified in the Indian Child Welfare Act, the Department shall not accept the child for placement in Minnesota unless the placement meets the good cause exception to the placement preferences as set forth in the Indian Child Welfare Act and relevant case law and the definitions herein. In making the determination as to whether the placement meets the "good cause exception" to the placement preferences, the Department shall contact the sending state and instruct it to get a letter from the Indian child's tribe.

2. Requests by Minnesota to Send Indian Children to Another State

Whenever the Department makes a request to another state that an Indian child be sent there for purposes of foster care, preadoptive or adoptive placement, the Department will instruct the sending agency to provide notice to the Tribe.

3. Review of Indian Children Currently in Placement

Following the effective date of this Agreement, the Department will provide the tribal social service agencies with information on all Indian children currently in placement, who have been sent under the compact to another state, or who have been sent by another state to the State of Minnesota. If resources permit, the Department will make such reports to the tribal social service agencies annually. The information shall include information received by the Department on the Interstate Compact Application Request To Place Child form that is used by the Department for the interstate placement of children.

If a tribe learns of a placement of an Indian child that fails to meet the placement preferences or the good cause exceptions set forth in the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, or this Agreement, upon notice from the tribe, the Department will cooperate with the tribe in remedying the placement so that it conforms with the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act and this Agreement.

4. Tribal Placements

Upon request by the Indian child's tribe, the Department will assist the tribe in the placing of Indian children from Minnesota to another state.

5. Retention of Jurisdiction

The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of placement.

D. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

If a tribe determines to adopt as tribal law the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the tribe agrees to provide notice to the Department of such enactment. Minn. Stat. §§ 518D.101 – 518D.317 (2006).