

# Social Services Manual

## Introduction

**XIII-3510**

## History

**XIII-3511**

From a historical perspective, the majority of federal policies directed at American Indian people provided an experience that was extremely negative. In particular, both Indian tribes and child welfare professionals were critically concerned about the results of federal, state and local welfare policies in terms of the destruction of Indian families. Prior to 1978, Indian children were placed in foster care at a nationwide rate 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 (ICWA) (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 cultural 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 (MIFPA) (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.

As authorized by 25 U.S.C. § 1919 and Minn. Stat. § 260.771, subd. 5, the Minnesota Tribal/State Agreement was developed to provide policies and procedures for maximizing the participation of tribes in decisions regarding Indian children, addressing barriers to implementing those services for the protection of Indian families and children and preventing foster placements and non- Indian adoptions. The Agreement is directed

at child welfare activities of the state through its local social services systems and attempts to impact the state's judicial systems. It represents the development of a comprehensive working relationship between each of the eleven Minnesota tribes and the Minnesota Department of Human Services for the delivery of child welfare services.

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

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

#### **Authority Cited in Manual**

**XIII-3512**

1. Pub. Law 83-280, codified at 28 U.S.C. § 1360; 18 U.S.C. section 1162; 25 U.S.C. §§ 1321-1326 (Civil and Criminal Jurisdiction on Reservations).
2. Pub. Law 95-608, codified at (Indian Child Welfare Act of 1978) 25 U.S.C. §§ 1911-1922.
3. Pub. Law 96-272, amending 42 U.S.C. § 620 et seq.; 42 U.S.C. § 670 et seq. (Foster Care and Adoption Assistance Act of 1980).
4. Minn. Stat. §§ 260.751 to 260.835 (1997) (Minnesota Indian Family Preservation Act).
5. 2007 Tribal/State Agreement

#### **Scope**

**XIII-3513**

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

#### **Summary of the Indian Child Welfare Act**

**XIII-3514**

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

1. requiring that active efforts are made to identify a child's membership or eligibility for membership in any federally recognized Indian tribe;
2. recognizing the jurisdiction of tribal courts;
3. providing for the dismissal or mandatory transfer of cases where the tribe has exclusive jurisdiction;
4. providing for transfer of jurisdiction over Indian child welfare cases to tribal court upon request in all other cases barring good cause to the contrary as defined under the ICWA and the 2007 Tribal/State Agreement;
5. requiring that states give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings;
6. requiring state courts, in the placement of Indian children and in the termination of parental rights of Indian children, to observe the highest standards applicable to prevent the destruction of Indian families. These standards apply to:
  - a. the level of effort required to prevent placement;
  - b. the level of effort required to reunify children with families;
  - c. the level of evidence required in judicial proceedings;
  - d. the requirement for a qualified expert witness under the ICWA;
7. requiring compliance with the order of preference of Indian children as set forth in the ICWA, unless the tribe has adopted a different order of preference;
8. requiring that the prevailing social and cultural standards of the local Indian community be applied in placement decisions;
9. requiring notice to tribe(s), Indian parent(s), and Indian custodian(s) of state court child custody proceedings;
10. providing for the right of parent(s), Indian custodian(s), and/or tribe(s) of an Indian child to intervene in the state court proceedings;
11. providing for court appointed counsel to represent indigent parent(s), or Indian custodian(s) of an Indian child;
12. providing protections for the parent(s) who voluntarily place their child in foster care or terminate parental rights;
13. requiring tribal and parental access, in accordance with applicable law, to records maintained by the state;

14. recognizing tribal licensing and/or approval of standards for foster homes;
15. funding of tribal social services to Indian families and their children;
16. providing for a process to invalidate the state court's action when ICWA has been violated; and
17. assisting Indian adults who were adopted as children to establish tribal affiliation;

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

### **Summary of the Minnesota Indian Family Preservation Act**

**XIII-3515**

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

1. requiring notification and providing for intervention by tribal social services when an Indian child is at risk of placement;
2. establishing greater emphasis of identification of an Indian child's tribe(s) and extended family members for placement purposes;
3. requiring the provision of prevention services that address the conditions in a child's home which could lead to placement;
4. requiring notice and providing for intervention by the tribe(s) in case of voluntary placement;
5. providing for tribal notice of and the right to participate in administrative reviews of voluntary foster placements;
6. establishing time limits for the local social services agencies to return an Indian child to its parent(s) or Indian custodian(s) upon receipt of a demand for immediate return;
7. requiring notice to the tribe(s) and access to agency records when the court finds an Indian child has committed a juvenile status offense;
8. re-enforcing that orders of a tribal court have the same force and effects as orders of state court;
9. clarifying that financial responsibility for the cost of placement or social services ordered by a tribal court shall be determined by the local social services agency, pursuant to Minn. Stat. § 256G.09;
10. providing an opportunity for the local social service agency to be heard in tribal court hearings;

11. providing that a copy of a court decree regarding the adoptive placement on an Indian child be provided to the tribe(s);

12. requiring DHS to provide any information to or for an adopted child, adoptive parent(s), Indian custodian(s), or guardian(s), which may be necessary to establish tribal membership;

13. requiring DHS to obtain and maintain records on Indian children in residential facilities, including the extent of compliance with placement preferences of the ICWA; and

14. providing grants to tribe(s) and Indian organizations to serve Indian children and families, and to implement the Minnesota Indian Family Preservation Act.

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

#### **General Indian Child Welfare Provisions**

**XIII-3520**

#### **Definitions**

**XIII-3521**

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

2. Adoptive Placement: the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

3. Agreement Compliance Contact: 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 the 2007 Tribal/State Agreement Part 1, E.3 at 9.

4. Active Efforts: 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 heal the Indian child and family. *See* 25 U.S.C. § 1912(d); 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 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 In re the Welfare of M.S.S., 465 N.W.2d 412 (Minn Ct. App. 1991). 25 U.S.C. § 1912 (d).

5. Best Interests of an Indian Child: 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. No. 228, 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).

**25 U.S.C. § 1902**  
**2007 Tribal State/Agreement, Part I, E.5 at 11.**

6. Case Plan: 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 (2007 Supp.), whichever is applicable; and Minnesota Rules of Juvenile Protection Rule 37. In addition, the parties agree that the focus shall be on family preservation and the elimination of the issues underlying the child protection proceeding.

7. Child Custody/Placement Proceeding: Foster care placement, termination of parental rights, preadoptive 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 proceeding 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: 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. Demand: A written and notarized statement signed by a parent or Indian custodian of a child that requests the return of a child voluntarily placed in foster care.

**Minn. Stat. §260.755, subd. 5**

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

11. Domicile: A person's true, permanent home, or the place to which he/she intends to return even though actually residing elsewhere; a child's domicile is determined by the domicile of his/her parent(s), even if the child has never resided at the parent(s)' domicile. "Domicile" is not necessarily synonymous with "residence", and one can reside in one place but be domiciled in another. For adults, domicile is established by physical presence in a place connected with a certain state of mind concerning ones' intent to remain there. Since most minors are legally incapable of forming the requisite intent to establish a domicile, their domicile is determined by that of the custodial parent. On occasion a child's domicile will be in a place where the child has never been.

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

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

**25 U.S.C. § 1922**

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

**25 U.S.C. § 1903**

14. Foster Placement: 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 or adoptive placement, or other permanency placements, a

determination of “good cause” not to follow the order of preferences 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 parents or the 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 in the 2007 Tribal/State Agreement, Part I, E.33 at 16-18.; or
- 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 placement preference criteria. Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, 67,595 at F.3 (Nov. 26, 1979).

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

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. Reg. No. 228, 67,584, 67,595 at F.3 (Nov. 26, 1979).

16. Good Cause Not to Transfer Jurisdiction to Tribal Court. Under Minnesota case law, “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)**

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. 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. 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. 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. Fundamental tribal values may guide the timing by a tribe to petition for 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. No. 228, 67,584, 67,595 at C.3(b)(i) – (iv), (c), (d) (Nov. 26, 1979) (as modified)**

17. ICWA: The Indian Child Welfare Act.

**25 U.S.C. §§ 1901-1963**

18. ICW Compliance Resolution Process: the process set forth in the 2007 Tribal/State Agreement to address allegations of non compliance with the Indian Child Welfare Act by a local social service agency regarding an Indian child.

**2007 Tribal/State Agreement, Part II, I.3. at 25.**

19. Indian Child Welfare Act Contact Person: A person(s) designated by a tribe, in writing, to receive formal notice regarding Indian child custody or placement proceedings.

20. Imminent Physical Damage or Harm: A threat of immediate physical injury; emotional harm to a child is not sufficient.

21. Indian: Any person who is a member of any Indian tribe, or who is an Alaskan 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).**

22. Indian Child: Any unmarried person who is under age eighteen (18) 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 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 existing Indian family" exception or doctrine is explicitly rejected in Minnesota.

**Minn. Stat. § 260.771, subd. 2 (2007)**

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), See In re S.N.R., 617 N.W.2d 77, 84 (Minn. Ct. App. 2000).**

23. Indian Child's Tribe: The tribe in which an Indian child is a member or eligible for membership. For an Indian child who is a member of or eligible for membership in more than one tribe, 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.

**25 U.S.C. § 1903 (5); Minn. Stat. § 260.755, subd. 9 (2006).**

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.

**Minn. Stat. § 260.771, subd. 2 (2007)**

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

**25 U.S.C. § 1903 (6);  
Minn. Stat. § 260.755, subd. 10 (2006).**

25. Indian Organization: any group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

**25 U.S.C. § 1903 (7)  
Minn. Stat. § 260.755, subd. 11(2006).**

26. Indian Tribe: 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);  
Minn. Stat. § 260.755, subd. 12 (2006).**

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

28. Local Social Services Agency: 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)**

29. MIFPA: The Minnesota Indian Family Preservation Act.

**Minn. Stat. §§ 260.751-260. 835 (2006)**

30. Parent: 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.

**5 U.S.C. § 1903 (9);  
Minn. Stat. § 260.755, subd. 14 (2006).**

31. Permanency Planning for Indian Children: 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 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. All permanency options have the potential to extinguish the relationship between the parent and child.

32. Placement Preferences: 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 the 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.

33. Pre-Adoptive Placement: The temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement. 25 U.S.C. § 1903(1)(iii).

34. 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 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.

**25 U.S.C. § 1912(e),(f).**

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, 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, consideration of these criteria should be made 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 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. No. 228, 67,584, 67,595 at D.4.(b) (Nov. 26. 1979)); see also Minnesota Rules 9560.0221, subpart 3.G.(2005).

35. Reservation: 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).**

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

**2007 Tribal/State Agreement, Part I, E.35 at 18.**

37. Secretary: The Secretary of the Interior.

**25 U.S.C. § 1903 (11);**  
**Minn. Stat. § 260.755, subd. 19 (2006).**

38. State Court: Any juvenile or family court of the State of Minnesota that has jurisdiction over a child custody proceeding.

39. Termination of Parental Rights ("TPR"): Any action resulting in the termination of the parent-child relationship. 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 abuse to the child. In addition, the petitioner must prove beyond a reasonable doubt one or more grounds for termination of parental rights pursuant to state statute. 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).

**25 U.S.C. § 1903(1)(iii)**

**25 U.S.C. § 1912(f)**  
**25 U.S.C. § 1913**  
**Minn. Stat. § 260C.301 (2006).**

40. Transfer of Permanent Legal Custody to a Relative: 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)**

41. Trial Home Visit: the return of a child 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)**

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

**25 U.S.C. § 1903(12)**

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

**Minn. Stat. § 260.755, subd. 21 (2006)**

44. Voluntary Foster Placement: An out of home foster placement by a social services agency away from the home of the parent, Indian custodian or legal guardian of an Indian child where a parent may have the child returned upon demand. Voluntary foster placement requires court certification as well as 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).**

45. Voluntary Relinquishment: The free will, non-coerced consent of a parent or Indian custodian to permanently give up custody of a child, to have parental rights terminated and then have the child placed for adoption. The consent must be executed in writing and 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**

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

### **Confidentiality of Records/Information**

**XIII-3522**

Any obligation by the local social service agency 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 Act, a tribe must have access to all data including confidential information regarding an individual with respect to its members; or
2. Entry of an order, by a state, federal, or tribal court with jurisdiction over the parties and the subject matter, which 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 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.

**Adapted from 2007 Tribal/State Agreement, Part II, F. at 23.**

### **Inter-Agency Coordination**

**XIII-3523**

To help insure coordination, understanding and implementation of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, the Department strongly encourages local social service agencies whose service areas include a tribe, or who have at least one child who is a member of a tribe on their case load to invite tribal representation on their multi-disciplinary child protection team.

**Tribal/State Agreement, Part II, J**

## **Local Social Service Agency Staff Assignments**

**XIII-3524**

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

## **Notice**

**XIII-3530**

## **Notice of Potential Out of Home Placement**

**XIII-3531**

When a local social services agency or private child placing agency determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and requires continued involvement of the agency with the child for a period in excess of 30 days, the agency shall send notice of the condition and of the initial steps taken to remedy it to the Indian child's tribal social services agency within seven days of the determination.

**Minn. Stat. § 260.761, subd. 2**

Tribes must 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. 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.

**25 U.S.C. §§1911(b) and 1912(a).**

## **Involuntary Placements**

**XIII-3532**

1. Notice Requirements. In any involuntary placement of an Indian child the local social service agency shall provide notice as follows:

- a. in any involuntary child custody proceeding, the local social service agency shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe;
- b. in any involuntary Indian child custody proceeding, notice of the proceeding shall be sent to the parents and Indian custodians, if any, and to any tribes that may be the Indian child's tribe, by registered mail with return receipt requested;
- c. the tribe(s), parent(s) or Indian custodian(s) receiving notice of a child custody proceeding has the right, upon request, to be granted twenty days, or such additional time as may be permitted under state law, from the date upon which the notice as received to prepare for the proceeding;
- d. the original or a copy of each notice sent shall be filed with the court together with any return receipts or other proofs of service;

e. notice may be personally served on any person entitled to receive notice in lieu of mail service;

f. if a parent or Indian custodian appears in court without an attorney, the court will inform him or her of the right to appointed counsel, the right to request that the proceedings be transferred to tribal court or to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent(s) or Indian custodian(s) is not already a party) to intervene in the proceedings; and

g. if the court or a petitioning party has reason to believe that a parent(s) or Indian custodian(s) is not likely to understand the contents of the notice because of lack of adequate comprehension of written English, a copy of the notice shall be sent to the Bureau of Indian Affairs agency nearest to the residence of that person, requesting that Bureau of Indian Affairs personnel arrange to have the notice explained to that person in the language that he or she best understands.

**The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228,  
at B.5 (Nov. 26, 1979).**

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

### 3. Time Limits and Extensions

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

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

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

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

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

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

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

**The Bureau of Indian Affairs Guidelines,  
44 Fed. Reg. No. 228, at B.6 (Nov. 26, 1979).**

### **Voluntary Placement Notice**

**XIII-3533**

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

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

**Minn. Stat. § 260.765, subd. 2**

### **Private Child Placing Agency Notice of Potential Preadoptive or Adoptive Placement**

**XIII-3534**

When a private child placing agency determines that an Indian child is in a dependent or other condition that could lead to a preadoptive or adoptive placement, the agency shall send notice of the condition to the Indian child's tribal social services agency within seven days of the determination. The agency shall include in the notice the identity of the birthparents and child, absent written objection by the birthparents. The private child placing agency shall inform the birthparents of the Indian child of any services available to the Indian child through the child's tribal social services agency, including child placement services, and should additionally provide the birthparents of the Indian child with all information sent from the tribal social services agency in response to the notice.

**Minn. Stat. § 260.761, subd. 3**

### **Notice of Good Cause Determination**

**XIII-3535**

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

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

**Return of Child from Placement - Notice****XIII-3536**

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

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

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

**Notice of Administrative Review****XIII-3537**

The local social service agency is required by P.L. 96-272, Social Security Act, Title IV, Part E., § 475(5)(B) (Foster Care and Adoption Assistance Act) 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 have access to all files and documents pertaining to placement. A child over the age of twelve (12) 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.

**Adapted from Minn. Stat. § 260.765, subd. 3**

**Jurisdictional Issues****XIII-3540****Identification of a Child as an Indian Child****XIII-3541**

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

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

**Minn. Stat. § 260.761, subd. 1**

The local social service agency shall ask each child and parent(s) if they are Indian or have an ancestor who is Indian. Efforts to discover whether the child is an Indian must be documented in the case record. The case record must clearly indicate all agency actions taken for identification purposes. The "ICWA Child Welfare Placement Preference and Considerations Documentation" form (SSIS 44) must be used for this purpose. (See SSM XIII-3672 for form). Local social service agencies are strongly encouraged to use the ICWA/MIFPA Social Worker Checklist (SSIS 42). Reasons to believe that the child is an Indian child might include, but are not limited to, the following:

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

**Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.1(c)(i-v), (Nov. 26, 1979).**

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

### **Verification of Membership**

**XIII-3542**

The local social service agency and private child-placing agency must seek verification of:

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

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

1. telephone and/or FAX; or

2. an office visit to the tribal social services office(s); or

3. a written communication.

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

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

**The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.6 (Nov. 26, 1979); 25 U.S.C. § 1912(a).**

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

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

**2007 Tribal/State Agreement, Part I, E.21 at 14.**

### **Eligibility for Membership in More than One Tribe**

**XIII-3543**

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

**The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.2(b)(Nov. 26, 1979).**

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

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

1. length of residence on or near the reservation of each tribe and frequency of contacts with each tribe;

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

**Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.2(c) (Nov. 26, 1979).**

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.

**Minn. Stat. § 260.755, subd. 9 (2006);  
25 U.S.C. § 1903(5)  
2007 Tribal/State Agreement, Part I, E.22 at 14.**

### **Determination of Tribal or State Court Jurisdiction**

**XIII-3544**

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."

Note: Jurisdictional conclusions, specifically, those regarding "concurrent" jurisdiction under Public Law 280 do not include the Red Lake Nation Reservation and Bois Forte Band of Chippewa, or any other Tribe over which Public Law 280 jurisdiction has been retroceded by the State of Minnesota.

1. General Requirements. Once the local social service agency has determined that a proposed Indian child custody proceeding is subject to the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act and has identified the Indian child's tribe(s) as required by SSM XIII-3542 and SSM XIII-3543, the local social service agency, prior to initiating any such proceeding in court, shall contact the child's tribe(s) to determine whether the child is a ward of tribal court and/or is domiciled on an Indian reservation. If either of these conditions is determined to exist, the local social service

agency shall further determine whether the child is located on or off the reservation, and the local social service agency must comply with the provisions of paragraphs (2) through (6) of this section.

## 2. Child is a Ward of Tribal Court

- a. Except in an emergency as described in subparagraph (2)(b), any proposed child custody proceeding involving an Indian child who is a ward of tribal court, regardless of the residence or domicile of the child, must be referred to the tribal social services agency for appropriate proceedings in tribal court. The local social service agency is encouraged to inform the parent(s) or Indian custodian of the referral. Following the referral, the local social service agency should provide such technical or professional advice, support or cooperation as the tribal social services agency or designated tribal representative may reasonably request.
- b. In case of an emergency involving an Indian child who is a ward of tribal court and who is located off the reservation, the local social service agency may initiate a removal or placement of the child by state court in order to prevent imminent physical damage or harm to the child in the manner and subject to the requirements of SSM XIII-3590.

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

- a. Except in a case of emergency as described in subparagraph (3)(b), the local social service agency shall refer any proposed child custody proceeding involving an Indian child to the tribal social services agency for appropriate proceedings in tribal court. This requirement applies to a child who resides or is domiciled within any Indian reservation where there is a tribal court vested with jurisdiction over child custody placement proceedings by the reservation's governing body. The local social service agency is encouraged to provide such technical or professional advice, support and cooperation as the designated tribal representative may reasonably request.
- b. In case of an emergency involving an Indian child who resides or is domiciled within an Indian reservation but who is located off the reservation, a removal or placement may be initiated in state court in the same manner as provided in paragraph (2)(b) for wards of tribal court.

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

- a. Except in a case of emergency as described in subparagraph (4)(b), the local social service agency shall refer any proposed Indian child custody proceeding involving an Indian child to the tribal social service agency for appropriate proceedings in tribal court. This requirement applies to a child whose tribe has established a tribal court and vested it with jurisdiction over child custody

placement proceedings but who is neither a resident nor a domiciliary of an Indian reservation. The local social service agency shall give written notice of any referral pursuant to this subparagraph to the child's parent(s) or Indian custodian, the designated tribal representative and the tribal court and shall make the referral unless:

(1) the local social service agency, after consulting with the designated tribal representative, concludes that there is good cause to the contrary;

(2) either parent of the child objects, in writing, to the referral; or

(3) the designated tribal representative declines, in writing, to accept the referral or the tribal court declines, in writing, to accept jurisdiction over the proposed proceeding.

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

Any time a referral is declined pursuant to this subparagraph, the local social service agency should advise the parent(s) or Indian custodian(s) that the provisions of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act (including but not limited to the required placement preferences and notices) govern placements of the child and that the child may not be placed in voluntary out of home placement unless the consent is validated by the juvenile court.

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

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

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

6. Child Custody Proceedings Brought in Violation of the Social Services Manual.

If a local social service agency initiates a child custody proceeding or learns that an Indian child custody proceeding has begun in state court, which, according to the

provisions of this part of the Social Services Manual (Determination of Tribal or State Court Jurisdiction), the local social service agency should have referred to the tribal social services agency to initiate appropriate action in tribal court, the local social service agency, at its own initiative or at the request of the Indian child's tribe(s), parent(s) or Indian custodian, shall immediately request the court to transfer the case to tribal court. Refusal by the local social service agency to seek such a transfer shall not be construed to limit the right of the child's tribe(s), parent(s) or Indian custodian to petition the court to transfer the case to tribal court pursuant to the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, the 2007 Tribal/State Agreement or this manual.

**Local Social Services Agency Services in Tribal Court** **XIII-3545**

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

**25 U.S.C. § 1911(d);  
Adapted from Minn. Stat. § 260.771, subd. 4**

DHS recognizes that, to the extent a child is otherwise eligible for social services under Minnesota Law, a tribal court may order a placement through a local social service agency provided that notice and opportunity to be heard in tribal court is provided to the local social service agency as required by Minn. Stat. § 260.771, subd. 4. This may require the local social service agency to provide services in connection with the placement as provided in similar placements by state courts.

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

**2007 Tribal/State Agreement, Part I, C.1**

**General Practice Provisions** **XIII-3550**

**Tribal Involvement** **XIII-3551**

To ensure that services that are compliant with the Indian Child Welfare Act are provided to an Indian child and the child's family, the local social service agency should obtain guidance from tribal resources before actions are taken that could disrupt an Indian child's relationship to family and tribe. 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.

**Availability of Records and Data; Confidentiality** **XIII-3552**

To enable the tribal social services agency or designated tribal representative to participate constructively in all cases involving the custody of Indian children as provided by the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, 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 tribal social service agency without violating any law of the state that may otherwise impose duties of confidentiality on the local welfare agency in order to implement the tribal state agreement.

**Minn. Stat. § 626.556, subd. 10(h)**

The local social service agency shall make available to the tribal social services agency or the designated tribal representative all case record materials, including reports, family social histories, and other documents and case information. This shall occur when the local social service agency is collecting information necessary to make a determination as to whether maltreatment has occurred, protective services are needed, or an Indian child is in a dependent or other condition that could lead to an out of home placement and requires the continued involvement of the agency with the child for a period in excess of thirty days. (See SSM XIII-3676 for ICWA/MIFPA Social Worker Checklist (SSIS 42));

**Minn. Stat. § 260.761, subd. 2; Minn. Stat. § 626.556, subd. 10(h).**

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

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

**Payment of Costs**

**XIII-3553**

The costs of providing foster care for Indian children must be paid by the local social service agency regardless of whether the child is placed by a state or tribal court or pursuant to a voluntary placement agreement facilitated by a local social service agency or a tribal social services agency that is approved or certified by tribal or state court, provided that the placement is in a state or tribally licensed home, and the tribal social services agency or the tribal court provides the local social service agency notice and an opportunity to be heard regarding the need for the placement. In any such placement, disputes concerning the financial responsibility for the costs of the placement shall be settled in the manner prescribed in Minn. Stat. 256G.09. The amount of the local social service agency's obligation is determined according to the same eligibility standards and rates of support applicable to other children for whom the local social service agency pays foster care. (See also Minn. Stat. § 260.771, subd. 4)

**2007 Tribal/State Agreement, Part III, A**

**Risk Assessments**

**XIII-3554**

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

**The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at D.3 (Nov. 26, 1979).**

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

Whenever possible, assessments of parents and children shall be conducted jointly by the local social service agency and tribal authorities. To achieve the best protection for an Indian child and family, an assessment should be done in consultation with an individual with substantial knowledge of:

1. the Tribe's prevailing social and cultural standards; and
2. child-rearing practices within the tribal community.

Efforts by the local social service agency to conduct joint assessments or to conduct assessments with an individual described above should be documented by the local social service agency.

**2007 Tribal/State Agreement, Part I, C.1**

### **Placement Preferences**

**XIII-3555**

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

**25 U.S.C. § 1915(d)**

Any local social service agency or private child placing agency considering placement of an Indian child shall make active efforts to identify and locate extended family members.

**Minn. Stat. § 260.761, subd.7;  
2007 Tribal/State Agreement, Part I, E.4.**

On the issue of placement preference, the local social service agency shall defer to the tribe in which a child is eligible for membership. See SSM XIII-3521, "Indian Child's Tribe" definition.

**Part 9560.0535, subpart 4, B**

### **Order of Placement Preference**

**XIII-3556**

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

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

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

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

**25 U.S.C. § 1915(b)**

In any out of home placement of an Indian child pursuant to a court order or court certification (25 U.S.C. § 1913 (a)), the local social service agency will place the child in accordance with the placement preference established by the Indian Child Welfare Act, unless the child's tribe has established by resolution a different order of preference.

**25 U.S.C. § 1915(c)**

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

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

In circumstances where a child requires placement in a non-relative home, or in a placement not within reasonable proximity to the child's home, or in placement where siblings are separated and not placed in close proximity, the local social service agency

will make active efforts to assure that the child is placed as quickly as possible in accordance with the preferences prescribed in this section.

### **Placement Outside of Order-Good Cause**

**XIII-3557**

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

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

**See also XIII-3521–(15)**

### **Parental and Child Preference**

**XIII-3558**

Where an Indian child is of sufficient age and maturity to be able to express a knowledgeable and reasoned opinion regarding his/her placement preference, and where otherwise appropriate under all surrounding circumstances, the local social service agency will inform the child's tribe(s) of the child's preference. The local social service agency should also inform the child's tribe(s) or tribal social services representative(s) of the placement preference of the parent(s). The child's parent(s) have the right to have the issue of placement or a change in placement determined by the juvenile court. 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.

**25 U.S.C. § 1915(c);  
2007 Tribal/State Agreement, Part 1, E.15.**

### **Active Efforts to Prevent Placement**

**XIII-3559**

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

**Minn. Stat. § 260.012 (c)**

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. 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.

**2007 Tribal/State Agreement, Part 1, E.4**

Active efforts include but are not limited to:

1. 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.
2. 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.
3. 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.
4. 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.

5. 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.

6. 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.

7. Using available tribal, other Indian agency and state resources that exist and that are appropriate for the child and family.

8. Providing services to extended family members to allow them to be considered for placement of the child.

**2007 Tribal/State Agreement, Part 1, E.4**

**Case Plan XIII-3560**

**Requirements XIII-3561**

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

**Minn. Stat. § 260C.212, subd. 1(b)**

The case plan shall:

a. ensure that active efforts are made to:

(1) eliminate the need for placement of a child, if possible;

(2) facilitate the return of a child; and/or

(3) eliminate the need for an emergency hold or other court hearing.

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

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

**25 U.S.C. § 1915(d)**

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

- e. be based on services designed to effectively address and eliminate the danger to the child; and
  - f. be formulated with the direct collaboration of the parent(s) or Indian custodian(s), the child, if of sufficient age, and the tribe(s).
  - g. ensure maximum involvement of the Indian parent(s) or Indian custodian(s) and tribal social services or designated tribal representative; and
  - h. focus on requirements for family members, which are related to an identified risk factor, noted in the child protection assessment. In emergency situations, the case plan will focus on immediate actions directed at keeping the child in the home, if possible, by resolving circumstances that create immediate endangerment to the child.
2. To ensure that each parent has his or her own individualized case plan, copies of all case plans should be provided to the parent(s), and/or Indian custodian(s), and must be provided to the tribal social services agency or designated tribal representative(s).

**Minn. Stat. § 260.761, subd. 2.;**  
**Minn. Rules, Part 9550.0090, subpart 1, F.**

**Content**

**XIII-3562**

Contents of the placement case plan must be consistent with Minn. Stat. §§ 260.761, subd. 2; 260C.212, subd. 1(b); and Minn. Rules, Part 9560.0603. Contents of a protective services case plan must be consistent with Minn. Stat. § 260C.201, subd. 6.

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

**Reunification Services**

**XIII-3563**

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

- 1. make active efforts to provide remedial services and rehabilitative programs designed to return the child to the custody of the parent(s) or Indian custodian(s);  
**25 U.S.C. § 1912(d)**
- 2. develop a plan designed to effectively address and eliminate the problems that necessitated the voluntary placement; and  
**Minn. Rules, Part 9560.0221, subpart 3,E**
- 3. collaborate directly with the parent(s) or Indian custodian(s), the child, if of sufficient age, and the tribe(s) in developing the plan.

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

**Adapted from Minn. Stat. § 260C.201, subd. 6**

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

Where necessary, the local social service agency, in cooperation with the tribal social services agency, will provide guidance to the parent(s) or Indian custodian(s) in:

1. how to best meet the child's special needs; and
2. assisting the child in adjustment to the familial home.

### **Cooperation and Access to Records**

**XIII-3564**

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

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

The local social services agency shall, upon request, give the tribal social services agency full cooperation, including access to all files concerning the child. If the files contain confidential or private data, the agency may require execution with the tribal social services agency of an agreement that the tribal social services agency will maintain the files according to the statutory provisions applicable to this data.

**25 U.S.C. § 1912(c);  
Minn. Stat. § 260.761, subd. 2  
Minn. Stat. § 626.556, subd.10(h).**

### **Post-Placement Services**

**XIII-3565**

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

The plan will be:

1. consistent with the best interests of the child, as defined in XIII-3521(5);

2. specific about meeting any special needs of the child;
3. consistent with the culture and customs of the child's Indian community;
4. formulated with the direct collaboration of the child, if of sufficient age;
5. whenever possible, formulated with the collaboration of other members of the child's extended family;
6. specific about the maintenance of an on-going familial relationship between the child, his/her siblings and other members of the child's extended family;
7. specific about how the local social service agency and the tribe(s) will also provide the foster home or facility or pre-adoptive home with information on the background and special needs, if any, of the child;
8. specific about how the local social service agency and the tribe(s) will provide instruction in the necessary parenting skills in how to best meet the child's special needs; and
9. specific about how the local social service agency and the tribe(s) will assist the child in adjusting to the termination of parental rights, foster care or pre-adoptive placement.

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

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

### **Periodic Review of Placement**

**XIII-3566**

The local social service agency is required by Public Law 96-272 (Foster Care and Adoption Assistance Act), 42 U.S.C. 670 *et seq.* to conduct a periodic review of all out of home placements of children not less than every six months unless reviews are being conducted by tribal social services or state court. A child over the age of twelve has a right to participate in the reviews.

At a minimum, the review will evaluate the suitability of the out of home placement, including but not limited to suitability of the placement under the Indian Child Welfare Act, determine whether continued out of home placement is necessary and appropriate or whether the child should be returned home, or if not, what permanent placement is consistent with the child's best interests as defined under Indian Child Welfare Act. The

review will also evaluate the services rendered to the child and family, and efforts made to facilitate visitation with parent(s), Indian custodian(s), siblings and extended family.

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

**Potential Placement** **XIII-3570**

**Notice of Potential Placement** **XIII-3571**

In order to encourage and aid the involvement of an Indian child's tribe(s) at the earliest possible time in any child protection intervention, the local social service agency shall give notice of a potential placement of an Indian child in the manner required. (*See* SSM XIII-3530 and 2007 Tribal/State Agreement, Part 1, C.2.)

The requirements of the following sections must be met whenever a local social service agency is considering a potential out of home placement:

- Cooperation and Access to Records, *see* SSM XIII-3552.
- Active Efforts to Prevent Placement, *see* SSM XIII-3559.
- Case Plan Requirements, *see* SSM XIII-3560.

**Voluntary Out of Home Placement** **XIII-3580**

**Voluntary Out of Home Placement Consent** **XIII-3581**

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

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

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

**25 U.S.C. § 1913**

**Tribal Social Services Involvement** **XIII-3582**

Before accepting a voluntary consent to any out of home placement, the local social service agency shall:

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

**Minn. Stat. § 260.765, subd. 2**

2. encourage the parent(s) or Indian custodian(s) to contact the tribe regarding available services to assist them in retaining custody of the child or to further the parent-child relationship during placement;

3. make active efforts to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family;

**Adapted from 25 U.S.C. § 1912(d);  
Minn. Stat. § 260.012(c).**

4. and refer the parent(s) or Indian custodian(s) to tribal resources or to American Indian agencies for provision of services.

These may include:

a. the extended family;

b. tribal social services; and

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

**The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, at D.2.,  
Commentary (Nov. 26, 1979)**

#### **Understanding By Parents of Voluntary Placement Consent**

**XIII-3583**

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

**Adapted from 25 U.S.C. § 1913(a)**

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

#### **State Court Validation of Voluntary Placement Consent**

**XIII-3584**

The local social service agency shall request that a state court:

1. validate a voluntary consent to out of home placement of an Indian child, in writing and recorded before a judge of a court of competent jurisdiction;

2. certify information from the Voluntary Placement Agreement Consent (DHS 3374)(SSIS 38) to include the content of the voluntary out of home placement consent form (*See* SSM XIII-3682 Appendix B);

3. certify that the parent(s) or Indian custodian(s) fully understand their rights, as well as legal consequences of their consent to voluntary out of home placement. The certification by the court should list those rights, including those listed in the content of the voluntary out of home placement consent form, as well as the consequences.

**25 U.S.C. § 1913(a)**

When there is a voluntary out of home placement, the steps set forth in the following sections must also be followed:

**Notification to Tribe, see SSM XIII-3530.**

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

### **Termination or Change in Placement in a Voluntary Placement**

**XIII-3585**

Whenever there is a change in the voluntary placement of an Indian child, the provisions of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act must be followed, including:

1. notice requirements: Minn. Stat. §§ 260.761, subd. 2, 260.765, subd 2, 25 U.S.C. § 1912, and the Voluntary Placement Notice requirements in SSM XIII-3580, and

2. placement preferences.

**25 U.S.C. § 1915**

The new placement shall be in accordance with the directions in the Social Services Manual regarding placement preferences, (See Placement Preferences, SSM XIII-3555 to 3558) unless the child is returned to the parent(s) or Indian custodian(s) from whose custody the child was originally removed.

The local social service agency should notify the tribe(s) at the earliest opportunity by phone and in writing of the need to change the Indian child's placement.

**Adapted from 25 U.S.C. § 1912(a);**

**25 U.S.C. § 1916(b).**

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

The local social service agency, in cooperation with the tribal social services agency, should assist the child to adjust emotionally to the change in any new placement.

The requirements of the following section must be met when a child is returned to the child's parents or an Indian custodian from a placement:

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

### **Petition for Review of Voluntary Placement**

**XIII-3586**

When the local social service agency petitions a state court for review of a voluntary out of home placement to determine if the placement is in the best interest of the child, pursuant to Minn. Stat. § 260C.141, subd. 2a, the local social service agency shall send notice (See Notice, SSM XIII-3533) and a copy of the petition to:

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

The local social service agency shall consult with the tribal social services or designated tribal representative regarding the necessity for continued out of home placement. The position of the tribe(s) regarding continued out of home placement must be documented in the case record.

### **Voluntary Into Involuntary Placement**

**XIII-3587**

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

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

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

### **Emergency Removal of an Indian Child**

**XIII-3590**

## **Emergency Removal When Permitted**

**XIII-3591**

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

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

**The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, at D.3(c) (Nov. 26, 1979).**

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

**25 U.S.C. § 1922;  
The Bureau of Indian Affairs Guidelines,  
44 Fed Reg. No 228, 67,584, at B.7(c)(Nov. 26, 1979).**

When a local social service agency initiates an emergency removal steps in the following sections must also be followed:

Identification of a Child as an Indian Child, see SSM XIII-3541.  
Risk Assessments, see SSM XIII-3554.

## **Initial Response/Notification**

**XIII-3592**

Whenever the local social service agency determines that circumstances exist that would justify the emergency removal of an Indian child pursuant to SSM XIII-3590 (Emergency Removal; When Permitted), the local social service agency shall contact the social services agency of the child's tribe(s) or the designated tribal representative thereof to seek the tribe's active involvement in the risk assessment process. Whenever possible, the initial contact shall be made within the following time periods:

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

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

**25 U.S.C. § 1922**

The local social service agency case record must document efforts directed at notification and efforts to seek active involvement of the child's tribe.

### **Emergency Contact List**

**XIII-3593**

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

When an Indian child is taken into emergency protective care, the court administrator, designee, or local social service agency 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.

### **Order of Preference in Emergency Placements**

**XIII-3594**

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

**25 U.S.C. § 1915(b)**

### **Continued Placement Beyond 72 Hours**

**XIII-3595**

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

**Minn. Stat. § 260.172, subs. 1 and 2**

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

**Minn. Stat. § 260.172, subd. 4**

If at any time prior to the fact finding hearing, the local social service agency determines that out of home placement is no longer necessary to prevent imminent physical damage or harm to the child, the local social service agency shall immediately take necessary

action, including obtaining necessary court orders, to return the child to the custody of the child's parent(s) or Indian custodian(s).

**Adapted from 25 U.S.C. § 1922;  
Minn. Stat. § 260.171, subd. 1.**

Once an emergency placement lasts beyond 72 hours and becomes a child custody proceeding under ICWA/MIFPA, the local social service agency is required to follow the relevant notice requirements for involuntary child custody proceedings (See SSM XIII-3610), or the notice requirements for voluntary placements. (See SSM XIII-3581, Appendix A, Content of Notice in an Involuntary Placement)

**Affidavits for Placements Beyond 72 Hours** **XIII-3596**

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

**Involuntary Out of Home Placement** **XIII-3610**

**Criteria, Assessment, Documentation** **XIII-3611**

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

**Services Prior to Court Action** **XIII-3612**

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

**25 U.S.C. § 1912(d)**

The local social service agency shall provide social services to the family when:

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

**Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at D.2 (Nov. 26, 1979)**

When a case plan is developed, the requirements of the following section must also be met:

Case Plan Requirements, see SSM XIII-3560.

### **Petition to State Court for Involuntary Out of Home Placement**

**XIII-3613**

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

**25 U.S.C. § 1912(d)**

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

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

The local social service agency shall not petition the state court for any involuntary out-of-home placement of an Indian child when the only grounds for the petition is:

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

**Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at D.3(c) (Nov. 26, 1979).**

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

### **Petition Content**

**XIII-3614**

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

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

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

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

Payment of Costs, *see* SSM XIII-3553.

Reunification Services, *see* SSM XIII-3563.

Periodic Review of Placement, *see* SSM XIII-3566.

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

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

Placement Preferences, *see* SSM XIII-3555.

### **Local Social Service Agency Social Studies and Reports**

**XIII-3615**

Whenever the local social service agency prepares a social study, report or predisposition study pursuant to Minn. Stat. §§ 260B.157; 260B.193, subd. 2; 260C.201, subd.7; 260B.225, subd. 9, or any similar statute, the local social service agency should consult with the tribal social services agency or designated tribal representative(s) in the preparation of the study. The tribe may submit a separate study and/or report.

### **Record of Placement Determination**

**XIII-3616**

For each involuntary out of home placement determination, the local social service agency shall:

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

Whenever siblings are not placed together, the record should:

1. explain in detail the reasons justifying separation of the siblings; and

2. the steps taken to maintain the sibling relationship following placement.

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

**25 U.S.C. § 1915(e)**

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

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

**Voluntary Relinquishment of Parental Rights** **XIII-3620**

**General Requirements** **XIII-3621**

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

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

(*See* SSM XIII-3540 to XIII-3544)

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

All parent(s) seeking to voluntarily terminate their parental rights shall be informed that:

1. the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent; and
2. after the entry of the final decree of adoption in any State court the parent may withdraw consent upon the grounds that the consent was obtained through fraud or duress and may petition the court to vacate the decree and return the child to the parent.

**Adapted from 25 U.S.C. §§ 1913(c) and (d)**

The local social service agency shall advise the parent(s) and Indian custodian(s) that:

1. the Indian Child Welfare Act and Minnesota Indian Family Preservation Act requirements of notification and placement preference govern the action of termination of parental rights proceedings 25 U.S.C. §§ 1915(a) and (b); Minn. Stat. § 260.761, subd. 2; SSM XIII-3530 (Notice) and SSM XIII-3555 (Placement Preferences)); and
2. they may pursue the relinquishment of parental rights for the adoption of the Indian child through a proceeding in the tribal court of the child's tribe, if available.

**Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at C.1 (Nov. 26, 1979)**

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

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

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

**25 U.S.C. § 1912(b)**

When a parent of an Indian child is seeking to voluntarily relinquish parental rights the requirements of the following section must be met:

Active Efforts, see SSM XIII-3559.

### **Explanation of Consent to Relinquish Parental Rights**

**XIII-3622**

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

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

## **Content of Consent**

**XIII-3623**

The consent document shall contain information described in Appendix E. (see SSM XIII-3685). The information required for the content of a voluntary termination petition is described in Appendix F. (See SSM XIII-3686)

For information on:

Notification to the Tribe, see SSM XIII-3533.  
Post-Placement Services, see SSM XIII-3565.

## **Withdrawal of Voluntary Consent**

**XIII-3624**

In any voluntary proceeding for termination of parental rights to, or adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

**25 U.S.C. § 1913(c)**

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

**25 U.S.C. § 1913(d)**

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

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

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

## **Involuntary Termination of Parental Rights**

**XIII-3630**

## **Criteria, Assessment, Documentation**

**XIII-3631**

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

### **Services Prior to Court Action**

**XIII-3632**

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

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

When a local social service agency brings a petition for the involuntary termination of parental rights, the requirements in the following sections must be met:

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

Tribal Notification, *see* SSM XIII-3532.

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

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

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

Notice of Review of Placement, *see* SSM XIII-3537.  
Return of Child from Placement, *see* SSM XIII-3536.  
Post-Placement Services, *see* SSM XIII-3565.

**Pre-Adoption/Adoption** **XIII-3640**

**Pre-Adoption Procedures** **XIII-3641**

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

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

(*See* Jurisdictional Issues, SSM XIII-3540)

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

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

Where the state court has jurisdiction and the local social service agency seeks to place a child for the purposes of adoption, the local social service agency:

1. should use the tribal social services agency or a designated tribal representative in identifying and evaluating the suitability of potential placements;
2. shall defer to tribal judgment as to the suitability of a particular home when the tribe has intervened pursuant to the Indian Child Welfare Act, and Minn. Stat. § 257.072, subd. 7(b);
3. shall provide the tribal social services agency with all the information it has about a child.

The local social service agency will advise prospective adoptive parents that they may have the option of filing the adoption proceedings in tribal court. The local social service agency will provide the prospective adoptive parents with the name, address, and telephone number of the tribe(s) or designated tribal representative(s) for further information regarding tribal court procedures.

Until entry of a final decree of adoption, the local social service agency, in cooperation with the tribal social services agency, will regularly monitor the pre-adoptive placement for:

1. continued overall suitability;
2. assurance that the child is not the object of abuse or neglect;
3. assurance that the child's special needs are being addressed;
4. assurance that the child's relationship with his/her siblings are maintained and where applicable, other members of the child's birth extended family are encouraged; and
5. all other conditions and commitments of the placement are being met.  
Minn. Stat. § 260C.212, subd. 7

**Placement Preference - Adoptive**

**XIII-3642**

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

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

**25 U.S.C. § 1915(a)**

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

Placement Outside of Order - Good Cause, see SSM XIII-3557.  
Parental and Child Preference, *see* SSM XIII-3558.

**Record of Placement Determination**

**XIII-3643**

For every adoptive placement determination, the local social service agency must prepare a detailed record:

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

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

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

**The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at F.3 (Nov. 26, 1979).**

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

### **Post-Placement Adoption Services**

**XIII-3644**

Services must be consistent with post-placement adoption services in general. If, prior to the entry of a final decree of adoption, the local social service agency is required to document its findings regarding the criteria below pursuant to Minnesota law or the request of the court, the local social service agency must provide the tribe(s) with such report(s) describing and evaluating:

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

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

### **Post-Placement Review**

**XIII-3645**

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

### **Termination of Adoption**

**XIII-3646**

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

**Adapted from 25 U.S.C. § 1916(a)**

### **Notice of Termination of Adoption**

**XIII-3647**

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

**Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at G.3 (Nov. 26,1979).**

**Placement Procedure**

**XIII-3648**

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

**Adapted from 25 U.S.C. § 1916(b)**

**Services to Child after Termination of Adoption**

**XIII-3649**

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

**Pre-Adoption/Adoption**

**XIII-3650**

**Adoption Records to the Secretary of the Interior**

**XIII-3651**

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

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

**25 U.S.C. § 1951(a);**

**Minn. Stat. § 260.781, subd. 1.**

**Death or Terminal Illness of an Adopted Child**

**XIII-3652**

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

**Minn. Stat. § 259.27**

**Minnesota Tribes**

1. Notice When the Tribe is Known

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

2. Notice when the Tribe or Band is Not Known

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

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

3. General Information

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

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

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

Director  
13090 Westly Dr., P.O. Box 26  
Nett Lake, Minnesota 55722  
218-757-0111

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

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

Lower Sioux Dakota Community  
Social Services Director  
P.O. Box 308  
Morton, Minnesota 56270  
507-697-9108

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

Prairie Island Indian Community  
Director  
1158 Island Blvd.  
Welch, Minnesota 55089  
651-385-2554

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

Shakopee Mdewakanton Dakota  
Director  
2330 Sioux Trail NW  
Prior Lake, Minnesota 55372

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

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

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

White Earth Indian Child Welfare  
Director  
P.O. Box 70  
Naytahwaush, Minnesota 56391  
218-935-5554

**Bureau of Indian Affairs Area Offices**

**XIII-3662**

Ojibwe and/or Dakota (specific reservation not known)

Area Director  
Bureau of Indian Affairs  
Aberdeen Area Office  
Attn: Social Services  
115 4<sup>th</sup> Avenue, SE  
Aberdeen, SD 57041

Area Director  
Bureau of Indian Affairs  
Billings Area Office  
Attn: Social Services  
316 North 26<sup>th</sup> St.  
Billings, MT 59101

Minneapolis Area Office (See address above)

Apache (specific reservation not known)

Area Director  
Bureau of Indian Affairs  
Albuquerque Area Office  
Attn: Social Services  
P.O. Box 26567 P.O.  
Albuquerque, NM 87125-6567

Area Director  
Bureau of Indian Affairs  
Anadarko Area office  
Attn: Social Services  
Box 368, WCD Office  
Complex  
Anadarko, OK 73005

Area Director  
Bureau of Indian Affairs  
Phoenix Area Office  
Attn: Social Services  
P.O. Box 10  
Phoenix, AZ 85001

Cherokee (send directly to tribes, not to BIA Area Offices)

Cherokee Nation of Oklahoma  
Indian Child Welfare Director  
P.O. Box 948  
Tahlequah, OK 74465

Principal Chief  
Eastern Band of Cherokee Indians of  
North Carolina  
Qualla Boundary  
P.O. Box 455  
Cherokee, NC 28719

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

Minneapolis Area Office  
Bureau of Indian Affairs  
Bishop Henry Whipple Bldg  
1 Federal Drive, Room 550  
Fort Snelling, Minnesota 55111-4007

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

Muskogee Area Office  
Bureau of Indian Affairs  
Federal Courthouse Bldg  
101 North 5<sup>th</sup> Street  
Muskogee, OK 74401-6206  
918-687-2507

Anadarko Area Office  
Bureau of Indian Affairs  
P.O. Box 368  
WCD Office Complex  
Anadarko, OK 73005

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

405/247-6673 ext. 257

602-871-5151

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

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

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

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

Juneau Area Office  
Bureau of Indian Affairs  
P.O. Box 25520  
Juneau, AK 99802-5520  
907/586-7628

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

## **Forms**

**XIII-3670**

Following are DHS forms or models and they may be reproduced or revised as necessary:

**Data Practices Agreement-Indian Social Services (SSIS 43)**  
(See SSM XIII-3671)

**ICWA Child Welfare Placement Preference and Considerations Documentation (SSIS 44)**  
(See SSM XIII-3672)

**Notice to Parent Considering Voluntary Placement of an Indian Child (SSIS 37)**  
(See XIII-3673)

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

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

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

**Voluntary Out-of-Home Placement Agreement Consent – Indian Child (DHS 3374)  
(SSIS 38)**

(See SSM XIII-3677)

**Appendices**

**XIII-3680**

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

**Appendix A**

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

**Appendix B**

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

**Appendix C**

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

**Appendix D**

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

**Appendix E**

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

**Appendix F**

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

**Appendix G**

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

## APPENDIX A

### Content of Notice in an Involuntary Placement

XIII-3681

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

1. the name of the Indian child;
2. his or her tribal affiliation;
3. a copy of the petition, complaint or other document by which the proceeding was initiated;
4. the name of the petitioner and the name and address of the petitioner's attorney;
5. a statement of the right of the biological parent(s) or Indian custodian(s) and the child's tribe to intervene in the proceeding;
6. a statement that if the parent(s) or Indian custodian(s) are unable to afford counsel, counsel will be appointed to represent them;
7. a statement of the right of the natural parent(s) or Indian custodian(s) and the Indian child's tribe to have, on request, twenty days or such additional time as may be permitted under state law to prepare for the proceedings;
8. the location, mailing address and telephone number of the court;
9. a statement of the right of the parent(s) or Indian custodian(s) or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court;
10. the potential legal consequences of an adjudication on future custodial rights of the parent(s) or Indian custodian(s); and
11. a statement in the notice to the tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the ICWA. **The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at B.5 (Nov. 26, 1979).**
12. location, telephone number and name, if known, of the judge or referee of the court which will hear the consent.

**Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at E.2 (Nov. 26, 1979).**

## APPENDIX B

### Content of Voluntary Out of Home Placement Consent

XIII-3682

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

1. the child's full name and date of birth;
2. tribes with which the Indian child is eligible for membership or has membership;
3. full names, birth dates, and addresses of the child's parent(s) or Indian custodian;
4. tribal affiliation(s) of the biological parent(s) and/or Indian custodian(s); if the tribal affiliation has not been determined, a statement to that effect shall be included;
5. a statement whether the Indian child's residence or domicile is on the reservation;
6. a statement that the Indian child is not a ward of any tribal court;
7. a statement affirming that the consent was not given prior to or within ten days after a child's birth;
8.
  - a. a statement acknowledging the understanding by the parent(s) or Indian custodian(s); of the right to services to prevent placement of the child;
  - b. the description of active efforts that have been made by the agency to prevent placement;
  - c. that the consent or order to be valid, must be approved in a court proceeding at which the parent(s) or Indian custodian(s) personally appear;
  - d. the right to withdraw consent to the voluntary out of home placement and to have the child returned within 24 hours after receipt of a written and notarized demand for return filed with the juvenile court. This return must be made unless a petition has been filed with the court alleging that the return would not be in the best interest of the child; and
  - e. that a copy of the consent is to be sent to the tribe and that the parent(s) or Indian custodian(s) has been advised of the provisions of ICWA governing voluntary foster placement;
9. the name of the local social service agency involved in the preparation of the consent and the date the consent was prepared;
10. name and address of the placement, if known at the time;
11. date and time of the hearing to obtain court validation of the consent, if known; and
12. location, telephone number and name, if known, of the judge or referee of the court which will hear the consent.

**Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at E.2 (Nov. 26, 1979).**

## APPENDIX C

### Content of an Affidavit for Emergency Placement Which Extends Beyond 72 Hours

XIII-3683

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

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

**Adapted from The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228., at B.7(b) (Nov. 26, 1979).**

## **APPENDIX D**

### **Content of Petition for the Involuntary Out of Home Placement of Indian Children**

**XIII-3684**

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

1. the full name, birth date, and address of the home from which the Indian child was removed;
2. tribal affiliation(s) of the Indian child. If the child's tribe(s) is not known, a statement of what information is known that could lead to identification of the child's tribe(s). Information must be provided for all tribe(s) with which the child may be eligible for membership;
3. the full names, maiden names, a.k.a.'s, and addresses of the child's parent(s) or Indian custodian(s), if known. If the whereabouts of persons are unknown, a detailed explanation shall be included of the efforts made to locate them;
4. the tribal affiliation(s) of the parent(s) and/or Indian custodian(s);
5. a statement as to whether the Indian child's residence or domicile is on a tribe(s)' reservation;
6. a specific and detailed account of the circumstances that led the local social service agency to petition the state court which specifies the circumstances, which put the child in danger or serious emotional or physical damage and with the direct cause and effect, clearly stated;
7. a statement of the specific active efforts made by the local social service agency (excluding emergency situations) to provide services designed to prevent the break-up of the Indian family. These efforts must relate to the circumstances described above in number 6. The statement shall also state whether these efforts were unsuccessful and the reasons for any lack of success; and
8. the names, address and telephone number of the petitioner.

## APPENDIX E

### Content of Consent Document for Voluntary Relinquishing of Parental Rights

XIII-3685

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

1. the name and birthdate of the Indian child;
2. the name of the Indian child's tribe, any identifying number or other indication of the child's membership in the tribe, if any; and
3. the name and address of the consenting parent(s) or Indian custodian(s);
4. the name and address of the person by or through whom any pre-adoptive or adoptive placement has been or is to be arranged;  
**The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, at E.2 (Nov. 26, 1979).**
5. a statement that the parent(s) or Indian custodian(s) has the right to services to prevent out of home placement of the child;
6. a description of the active efforts that have been made by the local social service agency to prevent out of home placement;
7. an acknowledgment that the consent, in order to be valid, must be approved in a court proceeding at which the parent(s) or Indian custodian(s) personally appear;  
**25 U.S.C. § 1913(a)**
8. a statement that the parent(s) or Indian custodian(s) has a right to court appointed counsel, if found to be indigent;  
**25 U.S.C. § 1912(b)**
9. a statement that the consent of the parent(s) may be withdrawn for any reason prior to the entry of a final decree of termination or adoption;  
**25 U.S.C. § 1913(c)**
10. an acknowledgment that after the entry of a final decree of adoption in any State court, the parent may withdraw consent upon the grounds that the consent was obtained through fraud or duress and may petition the court to vacate the decree;  
**25 U.S.C. § 1913(d)**
11. a statement that upon withdrawal of the consent, the child may be returned to the custody of the parent(s) or Indian custodian(s) unless a court order for out of home

placement has previously been entered, or the return of custody would likely cause imminent physical damage or harm to the child;

12. a statement that the parent(s) or Indian custodian(s) has been advised of the provision of the Indian Child Welfare Act governing voluntary relinquishment of parental rights or adoption;

13. the name and address of the local social service agency office or private agency, the name of the worker involved in the preparation of the consent, and the date the parent(s) or Indian custodian(s) signed the consent; and

14. a statement that the parent(s) or Indian custodian(s) were informed that when a child attains the age of eighteen (18), he/she will be able to obtain information about the tribal affiliation of both parents.

**25 U.S.C. § 1917**

## **APPENDIX F**

### **Content of Petition for Voluntary Relinquishing of Parental Rights**

**XIII-3686**

The content of a petition for voluntary relinquishment of parental rights of an Indian child filed pursuant to Minn. Stat. §§ 260C.307, subd. 1, and 260B.141, subds. 2 and 3, shall include:

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

## **APPENDIX G**

### **Content of Petition for Involuntary Termination of Parental Rights Child of an Indian Child**

**XIII-3687**

The content of a petition for involuntary termination of parental rights of an Indian child, filed pursuant to Minn. Stat. §§ 260C.307, subd. 1, and 260C.307, subds. 2 and 3, shall include:

1. full name, birthdate, and last known address of the child;
2. full name, birthdate and last known address of the parent(s) or Indian custodian(s). Include maiden names, married names, and names of parent(s) who are deceased, if known;
3. all tribes with which the Indian child is eligible for membership or has membership. If the Indian child's tribe is not known, a statement of what information is known that could lead to identification of the child's tribe;
4. the tribal affiliation(s) of all parent(s) and/or Indian custodian(s). If the tribal affiliation has not been determined, a statement to that effect shall be included;
5. a statement as to whether the Indian child's residence or domicile is on the reservation. If there is insufficient information available, a statement to that effect shall be included;
6. a statement that the Indian child is not a ward of any tribal court. If there is insufficient information available to determine tribal wardship status of the child, a statement to that effect shall be included;
7. a specific and detailed account of the grounds for termination;
8. a statement, with documentation, of the specific active efforts made by the local social service agency to provide remedial and rehabilitative services designed to prevent the break up of the Indian family;
9. a description of all alternative dispositions which were explored as preferable to termination;
10. a description of the long term plan for permanency and the justification of how the child will be better off after termination; and
11. a statement that no termination of parental rights may be ordered in a proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified witnesses, that the continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child.

