

SF 1108 / HF 1285 MIFPA CONFORMITY

Minnesota's legislation enacted to insure compliance with the federal Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is the Minnesota Indian Family Preservation Act, Minn. Stat. §§ 260.751-260.835. Most of the proposed amendments deal with fundamental aspects of the law that were overlooked in the original enactment of MIFPA in 1985 and the reenactment of 1999. The amendments correct those instances where MIFPA did not meet the federal minimum standards set forth in ICWA or where it reduced the level of efforts that the federal law requires.

260.771, subd. 1, has not previously included the requirement in ICWA that **domiciled** be part of the definition of when tribes have exclusive jurisdiction over child custody matters. ICWA says, "the tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is **domiciled** within the reservation of such tribe." Domicile protects those who at some point must leave the reservation and live elsewhere, but always recognize the reservation as their home with an intent to return at a future date.

260.755, subd. 12, added a qualifier to the definition of Indian tribe that provides an opportunity for a district court to make an independent determination that a tribe is or is not **exercising tribal governmental powers**. The federal law does not provide that latitude to state courts.

260.755, subd. 20, added a requirement to the definition of tribal court which does not exist in federal law. It imposed a **federally recognized** requirement regarding a tribe's jurisdiction over its members and their welfare. However, the tribal authority over members is an inherent part of a tribe's sovereignty.

260.761, subd. 7, reduces the level of effort required of social service agencies to less than what ICWA requires - that "an agency shall make **reasonable** efforts to identify and locate extended family." The federal ICWA requires **active** efforts. This same deficiency is also present in 260.765 subdivision 5. The bill corrects these deficiencies.

The only proposed change that does not involve conformity with ICWA is one that prohibits courts from denying an Indian child the protection of federal law based upon the court's perception that the child is "not Indian enough." The amendment to 260.771, subd. 2, prohibits the use of the so-called existing Indian family exception.

This court-created exception to the federal law has been disallowed in fourteen states and allowed to varying degrees in eight states. However, there is no provision in ICWA allowing a court to nullify an Indian child's right to protection because a judge believes that a child is "not Indian enough." The only eligibility requirement in ICWA is that a child be a member of a federally-recognized tribe or eligible for membership.



House Research Bill Summary

File Number: H.F. 1285

Date: March 8, 2007

Version: As introduced

Status: Health and Human Services Policy Committee

Authors: Walker and others

Subject: Indian Child Welfare

Analyst: Lynn Aves, 651-296-8079

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Overview

This bill amends the Minnesota Indian Preservation Act.

Section

- 1 Indian tribe.** Amends § 260.755, subd. 12. Makes the definition of Indian tribe more inclusive. Refers to Native group under the Alaska Native Claims Settlement Act, and strikes the words "and exercising tribal government powers."
- 2 Tribal court.** Amends § 260.755, subd. 20. Deletes "federally recognized" from the definition of "Tribal court."
- 3 Identification of extended family members.** Amends § 260.761, subd. 7. Specifies that an agency must make active efforts to identify and locate extended family before placing an Indian child.
- 4 Identification of extended family members.** Amends § 260.765, subd. 5. Specifies that an agency must make active efforts to identify and locate extended family before placing an Indian child.
- 5 Indian tribe jurisdiction.** Amends § 260.771, subd. 1. Provides that an Indian tribe has exclusive jurisdiction over a child placement proceeding involving an Indian child who resides or is domiciled within the reservation, except where jurisdiction is vested in the state by federal law. If an Indian child is a ward of a tribal court, the Indian tribe retains jurisdiction notwithstanding the domicile or residence of the child.
- 6 Court determination of tribal affiliation of child.** Amends § 260.771, subd. 2. Provides that the federal Indian Child Welfare Act and the Minnesota Indian Preservation Act are applicable without exception in any child custody proceeding involving an Indian child.



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HF1285 Status in **House** for Legislative Session 85

Bill Name: HF1285 Companion: SF1108 Revisor Number: 07-2599

[Bill Text](#)

[Bill Text](#)

[Bill Status](#)

[Senate Search](#)

House Authors Walker; Thissen; Huntley; Abeler; Bly

Short Description Indian child placement provisions modified.

[Long Description](#)
[Further Committee Actions](#)
[House Research Summary](#)

Body	Date	Action	Description / Committee	Page	Roll Call
House	02/22/2007	Introduction and first reading, referred to	Health and Human Services	493	
House	03/05/2007	Author added	Bly	786	

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KEY: ~~stricken~~ = removed, old language. underscored = added, new language.

Authors and Status

List versions



H.F. No. 1285, as introduced - 85th Legislative Session (2007-2008) Posted on Feb 22, 2007

1.2 relating to Indian child welfare; modifying child placement provisions for Indian
1.3 children;amending Minnesota Statutes 2006, sections 260.755, subdivisions 12,
1.4 20; 260.761, subdivision 7; 260.765, subdivision 5; 260.771, subdivisions 1, 2.
1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2006, section 260.755, subdivision 12, is amended to
1.7 read:

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

1.13 Sec. 2. Minnesota Statutes 2006, section 260.755, subdivision 20, is amended to read:

1.14 Subd. 20. **Tribal court.** "Tribal court" means a court with ~~federally recognized~~
1.15 jurisdiction over child custody proceedings ~~and~~ which is either a court of Indian offenses,
1.16 or a court established and operated under the code or custom of an Indian tribe, or ~~the~~
1.17 any other administrative body of a tribe which is vested with authority over child custody
1.18 proceedings. Except as provided in section 260.771, subdivision 5, nothing in this chapter
1.19 shall be construed as conferring jurisdiction on an Indian tribe.

1.20 Sec. 3. Minnesota Statutes 2006, section 260.761, subdivision 7, is amended to read:

2.1 Subd. 7. **Identification of extended family members.** Any agency considering
2.2 placement of an Indian child shall make ~~reasonable~~ active efforts to identify and locate
2.3 extended family members.

2.4 Sec. 4. Minnesota Statutes 2006, section 260.765, subdivision 5, is amended to read:

2.5 Subd. 5. **Identification of extended family members.** Any agency considering
2.6 placement of an Indian child shall make ~~reasonable~~ active efforts to identify and locate
2.7 extended family members.

2.8 Sec. 5. Minnesota Statutes 2006, section 260.771, subdivision 1, is amended to read:

2.9 Subdivision 1. **Indian tribe jurisdiction.** An Indian tribe ~~with a tribal court~~ has
2.10 exclusive jurisdiction over a child placement proceeding involving an Indian child who
2.11 resides ~~or is domiciled~~ within the reservation of ~~such the~~ tribe ~~at the commencement of~~
2.12 ~~the proceedings~~, except where jurisdiction is otherwise vested in the state by existing
2.13 federal law. When an Indian child is ~~in the legal custody of a person or agency pursuant~~
2.14 ~~to an order~~ a ward of a tribal court, the Indian tribe retains exclusive jurisdiction,
2.15 notwithstanding the residence or domicile of the child.

2.16 Sec. 6. Minnesota Statutes 2006, section 260.771, subdivision 2, is amended to read:

2.17

Subd. 2. **Court determination of tribal affiliation of child.** In any child placement proceeding, the court shall establish whether an Indian child is involved and the identity of the Indian child's tribe. The federal Indian Child Welfare Act and this chapter are applicable without exception in any child custody proceeding, as defined in the federal act, involving an Indian child. This chapter applies to child custody proceedings involving an Indian child whether the child is in the physical or legal custody of an Indian parent, Indian custodian, Indian extended family member, or other person at the commencement of the proceedings. A court shall not determine the applicability of the federal Indian Child Welfare Act or this chapter to a child custody proceeding based upon whether an Indian child is part of an existing Indian family or based upon the level of contact a child has with the child's Indian tribe, reservation, society, or off-reservation community.

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SF1108 Status in Senate for Legislative Session 85

Bill Name: SF1108 Companion: HF1285 Revisor Number: 07-2599

[Bill Text](#) [Bill Text](#)
 [Bill Status](#)
 [House Search](#)

Senate Authors Torres Ray; Olson, M.; Lourey; Berglin; Koering

Short Description Indian children child placement provisions modifications

[Long Description](#) [Committee Hearings and Actions](#) [Senate Counsel & Research Summary](#)

Body	Date	Action	Description / Committee	Page	Roll Call
Senate	02/21/2007	Introduction and first reading		438	
Senate	02/21/2007	Referred to	Judiciary		
Senate		See also	SF1221, Art. 1		

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S.F. No. 1108, as introduced - 85th Legislative Session (2007-2008) Posted on Feb 20, 2007

1.1 A bill for an act relating to Indian child welfare; modifying child placement provisions for Indian
 1.3 children; amending Minnesota Statutes 2006, sections 260.755, subdivisions 12,
 1.4 20; 260.761, subdivision 7; 260.765, subdivision 5; 260.771, subdivisions 1, 2.
 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2006, section 260.755, subdivision 12, is amended to
 1.7 read:

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

1.13 Sec. 2. Minnesota Statutes 2006, section 260.755, subdivision 20, is amended to read:

1.14 Subd. 20. **Tribal court.** "Tribal court" means a court with ~~federally recognized~~
 1.15 jurisdiction over child custody proceedings and which is either a court of Indian offenses,
 1.16 or a court established and operated under the code or custom of an Indian tribe, or ~~the~~
 1.17 any other administrative body of a tribe which is vested with authority over child custody
 1.18 proceedings. Except as provided in section 260.771, subdivision 5, nothing in this chapter
 1.19 shall be construed as conferring jurisdiction on an Indian tribe.

1.20 Sec. 3. Minnesota Statutes 2006, section 260.761, subdivision 7, is amended to read:

2.1 Subd. 7. **Identification of extended family members.** Any agency considering
 2.2 placement of an Indian child shall make ~~reasonable~~ active efforts to identify and locate
 2.3 extended family members.

2.4 Sec. 4. Minnesota Statutes 2006, section 260.765, subdivision 5, is amended to read:

2.5 Subd. 5. **Identification of extended family members.** Any agency considering
 2.6 placement of an Indian child shall make ~~reasonable~~ active efforts to identify and locate
 2.7 extended family members.

2.8 Sec. 5. Minnesota Statutes 2006, section 260.771, subdivision 1, is amended to read:

2.9 Subdivision 1. **Indian tribe jurisdiction.** An Indian tribe ~~with a tribal court~~ has
 2.10 exclusive jurisdiction over a child placement proceeding involving an Indian child who
 2.11 resides or is domiciled within the reservation of ~~such the~~ such tribe ~~at the commencement of~~
 2.12 ~~the proceedings, except where jurisdiction is otherwise vested in the state by existing~~
 2.13 federal law. When an Indian child is ~~in the legal custody of a person or agency pursuant~~

2.14 ~~to an order a ward~~ of a tribal court, the Indian tribe retains exclusive jurisdiction,
2.15 notwithstanding the residence or domicile of the child.

2.16 Sec. 6. Minnesota Statutes 2006, section 260.771, subdivision 2, is amended to read:

2.17 Subd. 2. **Court determination of tribal affiliation of child.** In any child placement
2.18 proceeding, the court shall establish whether an Indian child is involved and the identity
2.19 of the Indian child's tribe. The federal Indian Child Welfare Act and this chapter are
2.20 applicable without exception in any child custody proceeding, as defined in the federal act,
2.21 involving an Indian child. This chapter applies to child custody proceedings involving
2.22 an Indian child whether the child is in the physical or legal custody of an Indian parent,
2.23 Indian custodian, Indian extended family member, or other person at the commencement
2.24 of the proceedings. A court shall not determine the applicability of the federal Indian
2.25 Child Welfare Act or this chapter to a child custody proceeding based upon whether an
2.26 Indian child is part of an existing Indian family or based upon the level of contact a child
2.27 has with the child's Indian tribe, reservation, society, or off-reservation community.

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