

9560.0221 CRITERIA FOR SEEKING CHILD'S REMOVAL FROM HOME.

Subpart 1. **Agency evaluation before seeking removal.** Before seeking removal of a child from the child's home, the local agency must evaluate whether:

A. the child is an Indian child as defined in Minnesota Statutes, section 260.755, subdivision 8; and if so, the agency must follow the process in subpart 3;

B. the agency has made reasonable efforts except as specified in Minnesota Statutes, section 260.012, paragraph (a), to provide services that are:

- (1) relevant to the safety and protection of the child;
- (2) adequate to meet the needs of the child and family;
- (3) culturally appropriate;
- (4) available and accessible;
- (5) consistent and timely; and
- (6) realistic under the circumstances;

C. in the case of child maltreatment, the alleged offender can be removed from the child's home;

D. a caregiver is willing and able to protect the child if the alleged offender cannot be removed from the child's home; or

E. the child and child's caregiver are informed of the services and accept the services the agency offers.

Subp. 2. Removal of non-Indian child from home.

A. If the local agency determines that a child is in imminent danger of maltreatment and that the actions in subpart 1 would not ensure the child's safety, then an emergency exists and the agency must seek removal of the child from the home according to part 9560.0220, subpart 9, or obtain an appropriate protective court order.

B. The local agency may seek legal authority to place the child in foster care in nonemergency circumstances when:

- (1) a parent voluntarily requests placement of the child; or
- (2) when the local agency believes the child is in need of protection and services as defined in Minnesota Statutes, section 260C.007, subdivision 6.

Subp. 3. Removal of Indian child.

A. The agency must seek emergency removal of any Indian child who is temporarily or permanently located off the reservation if necessary to prevent imminent physical damage or harm to the child. The agency must expeditiously initiate a child

custody proceeding subject to the Indian Child Welfare Act, United States Code, title 25, chapter 21, subchapter I, section 1915, transfer the child to the jurisdiction of the appropriate tribe, or restore the child to the parent. The emergency placement must terminate immediately when it is no longer necessary to prevent imminent physical damage or harm to the child.

B. If the agency believes it will be involved with an Indian child for more than 30 days, it must notify the child's tribe of the potential for foster care placement within seven days of determining that the child might be placed out of the home.

C. If the Indian child resides on a reservation with jurisdiction over child welfare matters or is a ward of a tribal court, the agency may not seek nonemergency removal of the child even when the maltreatment occurs off the reservation. In nonemergency cases, the agency must refer the Indian child to tribal social services.

D. In cases involving an Indian child who is not a resident of or domiciled on a reservation, the agency may seek nonemergency removal of the child only if clear and convincing evidence can show that the child is likely to suffer serious emotional or physical damage in the care of the parent or Indian custodian.

E. An agency removing an Indian child must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. Active efforts include, but are not limited to, soliciting the advice of tribal representatives and, if the parents do not object, members of the child's extended family.

F. Removal of an Indian child requires testimony by a qualified expert witness as to the likelihood of harm from continued residence with the parent or Indian custodian.

G. A "qualified expert witness" means:

(1) a member of an Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs of family organization and child rearing;

(2) a lay expert witness having 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 having substantial education and experience in the area of the professional person's specialty, along with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community.

Statutory Authority: *MS s 14.388; 257.071; 257.072; 260C.212; 260C.215; 626.556*

History: *20 SR 2777; L 1999 c 139 art 4 s 2; 25 SR 1772; L 2001 c 178 art 1 s 44*

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