

1 Department of Human Services

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3 Adopted Permanent Rules Relating to Child Protection

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5 Rules as Adopted

6 9560.0221 CRITERIA FOR SEEKING CHILD'S REMOVAL FROM HOME.

7 Subpart 1. Agency evaluation before seeking removal.

8 Before seeking removal of a child from the child's home, the

9 local agency must evaluate whether:

10 A. the child is an Indian child as defined in  
11 Minnesota Statutes, section 257.351, subdivision 5; and if so,  
12 the agency must follow the process in subpart 3;

13 B. the agency has made reasonable efforts to provide  
14 services that are:

15 (1) relevant to the safety and protection of the  
16 child;

17 (2) adequate to meet the needs of the child and  
18 family;

19 (3) culturally appropriate;

20 (4) available and accessible;

21 (5) consistent and timely; and

22 (6) realistic under the circumstances;

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

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

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

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

31 A. If the local agency determines that a child is in  
32 imminent danger of maltreatment and that the actions in subpart  
33 1 would not ensure the child's safety, then an emergency exists  
34 and the agency must seek removal of the child from the home  
35 according to part 9560.0220, subpart 9, or obtain an appropriate



1 protective court order.

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

4 (1) a parent voluntarily requests placement of  
5 the child; or

6 (2) when the local agency believes the child is  
7 in need of protection and services as defined in Minnesota  
8 Statutes, section 260.015, subdivision 2a.

9 Subp. 3. Removal of Indian child.

10 A. The agency may must seek emergency removal of any  
11 Indian child who is temporarily or permanently located off the  
12 reservation if necessary to prevent imminent physical damage or  
13 harm to the child. The agency must expeditiously initiate a  
14 child custody proceeding subject to the Indian Child Welfare  
15 Act, United States Code, title 25, chapter 21, subchapter I,  
16 section 1915, transfer the child to the jurisdiction of the  
17 appropriate tribe, or restore the child to the parent. The  
18 emergency placement must terminate immediately when it is no  
19 longer necessary to prevent imminent physical damage or harm to  
20 the child.

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

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

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

1 custodian.

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

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

12 F. G. A "qualified expert witness" means:

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

16 (2) a lay expert witness having substantial  
17 experience in the delivery of child and family services to  
18 Indians, and extensive knowledge of prevailing social and  
19 cultural standards and child rearing practices within the Indian  
20 child's tribe; or

21 (3) a professional person having substantial  
22 education and experience in the area of the professional  
23 person's specialty, along with substantial knowledge of  
24 prevailing social and cultural standards and child-rearing  
25 practices within the Indian community.