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CHILDREN'S LAW CENTER OF MINNESOTA

Recent Legislative Changes Affecting Child Protection Practice

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MINNESOTA AFRICAN AMERICAN FAMILY PRESERVATION AND CHILD WELFARE DISPROPORTIONALITY ACT

SF0716

▶ Goals

- ▶ Greater protections established for African American (AA) and disproportionately represented (DR) children
- ▶ Promotes stability and security of AA and DR children and their families
- ▶ Makes removal of AA and DR children more difficult
- ▶ Improves reunification outcomes for AA and DR families
- ▶ Best interests includes “culturally informed practice lens”

▶ Effective January 1, 2027



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- ▶ AA includes biracial children and is self-reported by child or parent.
- ▶ DR includes a child whose “race, culture, ethnicity, disability status, or low-income socioeconomic status is disproportionately encountered, engaged, or identified in the child welfare system as compared to the representation in the state's total child population, as determined on an annual basis by the commissioner.”



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- ▶ Active efforts are required at all stages.
- ▶ Before removal, the social services agency must work with family to keep child in home and implement a **safety plan** that addresses the specific allegations.
- ▶ If neglect, this must include economic services and support.
- ▶ Some exceptions:
 - ▶ Allegations of sexual abuse or egregious harm,
 - ▶ Parent not willing to follow safety plan,
 - ▶ Parent has abandoned or is unavailable, or
 - ▶ Parent has chronic substance use disorder and is unable to parent.



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- ▶ Out-of-home placement **prohibited** unless “the court finds by clear and convincing evidence that the child would be at risk of serious emotional damage or serious physical damage if the child were to remain in the child's home.”
- ▶ Before placed out of the home, social services must make active efforts.



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- ▶ “Best practices” in visitation; active efforts for visitation for child and parents, siblings, and relatives.
- ▶ Placement with noncustodial or nonadjudicated parent must be ordered if the parent is willing and able and the agency must make active efforts to assist parent so child can be placed in the home.



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- ▶ Removal of an AA or DR child is based “**imminent physical danger or harm,**” defined as:
 - ▶ “a child is threatened with immediate and present conditions that are life-threatening or likely to result in abandonment, sexual abuse, or serious physical injury.”
 - ▶ “The existence of community or family poverty, isolation, single parenthood, age of the parent, crowded or inadequate housing, substance use, prenatal drug or alcohol exposure, mental illness, disability or special needs of the parent or child, or nonconforming social behavior does not by itself constitute imminent physical damage or harm.”



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- ▶ New hearings to be held “whenever new information that the emergency situation has ended.”
- ▶ Immediate return once placement is no longer necessary to prevent imminent physical damage or harm.
- ▶ Emergency removal or placement must terminate after 30 days unless the court finds by clear and convincing evidence of imminent physical damage or harm AND “it has not been possible to initiate a child placement proceeding with all of the protections under sections 260.61 to 260.68”



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- ▶ Permanency
 - ▶ Preference is for transfer of custody to the noncustodial parent or a willing and able relative.



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- ▶ TPR **cannot** be based on failure to complete case plan requirements
- ▶ Restrictions on TPRs – TPR only in certain circumstances:
 - ▶ Allegations involved sexual abuse
 - ▶ Egregious harm
 - ▶ Failing to protect a child from an overt act or condition that constitutes egregious harm
 - ▶ Specific crimes (murder, manslaughter, domestic assault by strangulation, felony domestic assault, kidnapping, CSC, soliciting prostitution, prostitution of a minor, possessing child porn, malicious punishment, neglect, endangerment of a child, use of a minor in sexual performance)



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- ▶ TPR allowed if no willing or able relative for a transfer of custody, and
 - ▶ Child abandoned;
 - ▶ Parent is palpably unfit;
 - ▶ Egregious harm that indicates a lack of regard for the child's well-being, reasonable person standard for best interests.
- ▶ Active efforts failed to correct conditions. Presumed failure if all the following are met:
 - ▶ Child out of home for 12 of 22 preceding months. For children under 8, 6 months unless parent maintains contact and is case-plan compliant.
 - ▶ Case plan approved by court.
 - ▶ Parent has not substantially complied with court orders and a reasonable case plan.
 - ▶ Active efforts made.



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- ▶ 90 days to appeal termination of parental rights (normally 30)



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- ▶ Creation of African American Child Well-Being Advisory Council
- ▶ Social services department
 - ▶ Certain actions grounds for adverse employment action
 - ▶ Case review of each case including summary report to African American Child Well-Being Advisory Council; annual report with findings from the council starting in 2028 and remediation plans for agencies with disproportionalities and disparities
 - ▶ Cultural competency trainings for workers
- ▶ Grants for programs led by African American or disproportionately represented communities.



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- ▶ DHS's current African American Child Well-Being Unit to facilitate the rollout and conduct reviews and assess any complaints made through the newly established "Child Welfare Compliance and Feedback Portal."
- ▶ Reports to the Council
- ▶ Starts July 1, 2024



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- ▶ Phase-in program in Hennepin and Ramsey counties starting January 1, 2025
- ▶ MAAFP&CWDA Working Group to develop the phase in programs.
- ▶ \$5 million in 2025 for Hennepin and Ramsey to implement the phase-in program.



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- ▶ Modifies child protection statutes:
 - ▶ Re-establishment of parental rights
 - ▶ Who can petition? A child over 10, GAL, social services department
 - ▶ From 4 years to 2 years after TPR
 - ▶ Effective January 2027 for all CHIPS cases
 - ▶ Part of the phase in program for Ramsey and Hennepin in 2025



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▶ In the news:

- ▶ <https://sahanjournal.com/news-partners/governor-bill-minnesota-kids-foster-care/>
- ▶ <https://imprintnews.org/top-stories/minnesota-governor-expected-to-sign-bill-raising-bar-for-taking-african-american-or-disproportionately-represented-children-into-foster-care/249509>
- ▶ <https://www.cato.org/commentary/minnesota-bids-segregate-its-child-welfare-agencies>



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MINNESOTA INDIAN FAMILY PRESERVATION ACT MODIFICATIONS

HF5237

- ▶ MIFPA applies to third-party custody petitions if the petition involves an Indian child.
 - ▶ Parents appointed counsel in custody proceedings.
- ▶ Definition of “extended family” does not include the sibling’s parent/guardian/custodian unless they are also independently related to the child.
- ▶ Added a definition for “tribal representative” – does need not be an attorney but is designated by and acts on behalf of the tribe.



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MIFPA MODIFICATIONS

- ▶ Consultation with the tribal representative is required. Tribal representatives can appear remotely at all hearings.
- ▶ Indian heritage inquiry is required and responses must be made on the record. If there is reason to believe a child is Indian, the court must confirm that the agency has used due diligence to identify and work with any relative tribes to verify and proceed as if the case is a MIFPA case.



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MIFPA MODIFICATIONS

- ▶ Active efforts section was cleaned up and ensures that the same active efforts requirements apply to child placement, TPR, guardianship to the commissioner, or custody changes. Expanded court's findings regarding whether efforts were appropriate and necessary and services were appropriate and meaningful to include:
 - ▶ Tribal representative asked to “evaluate” to “provided an opportunity to consult with and be involved in any investigations or assessments.”
 - ▶ Tribal representative provided with all information about the proceeding and requested to assist in identifying services.
 - ▶ Whether active efforts were made regarding compliance with placement preferences
 - ▶ Whether services are provided to extended family members who are a primary placement option including license barriers.



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MIFPA MODIFICATIONS

- ▶ For adoptions:
 - ▶ Requires some active efforts findings before an adoption
 - ▶ Court must find that
 - ▶ parents consent to the placement for adoption,
 - ▶ fraud is not present and parents are not under duress,
 - ▶ parent was offered but declined services, and
 - ▶ parent was counseled on alternatives to adoption and contact agreements.



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MIFPA MODIFICATIONS

- ▶ Children under 10 *may* be appointed counsel if appropriate and in their best interests.
- ▶ Cannot be public defenders.



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MIFPA MODIFICATIONS

- ▶ Changes did NOT include:
 - ▶ Prohibition on foster parents from intervening
 - ▶ Extended timelines for permanency petitions



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SSI/SSDI NOTICE

- ▶ County agencies must document and provide written notice to foster youth when the county receives SSI/SSDI benefits on the child's behalf.
- ▶ Funds must be used solely for the care of the child and recorded.
- ▶ Each agency must annually report starting on July 1, 2025.



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CHILDREN UNDER 13 & DELINQUENCY

- ▶ If a child commits (or alleged to have committed) a delinquent act and is under 13, the child is subject to a child protection petition NOT a delinquency petition.
- ▶ Previously applied to children under 10



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MISSING & TRAFFICKED YOUTH

- ▶ CHIPS includes labor trafficked youth
- ▶ When a missing child or youth is reported to the National Center for Missing and Exploited Children, social services departments must
 - ▶ Implement protocols to locate the youth and
 - ▶ When found, provide notice, interview the child, and provide services if any reason to believe the youth was trafficked.
- ▶ DHS now requires all reports of sex trafficking by non-caregiver and unknown alleged offenders to be **screened in** by local welfare agencies
 - ▶ <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-7641N-ENG>



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EFC PAYMENTS

- ▶ While in EFC and in an unlicensed supervised independent living setting, EFC payments must be made to the youth or to a vendor and notes that if there is reason to believe the youth is being financially exploited, the payment should be made to a vendor.



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UPDATES TO TRANSFER OF PERMANENT LEGAL AND PHYSICAL CUSTODY (TPLPC) PROVISIONS:

- ▶ If to a parent: only finding is whether the parent understands that a TPLPC includes “permanent, ongoing responsibility for the protection, education, care, and control of the child and decision making on behalf of the child until adulthood”
- ▶ If to a relative:
 - ▶ Court must review the relative’s suitability, including a background study, and in child’s best interests
 - ▶ Additional findings:
 - ▶ Understand “permanent, ongoing responsibility for the protection, education, care, and control of the child and decision making on behalf of the child until adulthood”
 - ▶ Child shall not be returned to a parent without court’s approval
- ▶ When another party files the petition, it must include suitability of the custodian and requires a background study be completed prior to the court granting the petition.



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- ▶ **Case plan summary:** Requires social services agency to create one- to two-page summary of the out-of-home placement plan that lists in plain language the requirements of parents.
- ▶ **Emergency relative placement:** Children cannot be placed in emergency relative placement when there is a permanent disqualification as to licensing.
- ▶ **Parental disability:** Parental or guardian/custodian disability may not be the sole rationale for determining a child is without proper parental care.
 - ▶ Supportive parenting services must be offered.
- ▶ **Preventing a report:** Criminal penalties for a person who prevents or attempts to prevent a mandated reporter from making a report.
- ▶ **Adoptees access to birth records.**



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FOSTERING INDEPENDENCE GRANTS

- ▶ An additional \$5 million for Fostering Independence Grants for next year to address the shortfall
- ▶ Instructions on how to handle future shortfalls: proportionate grants, priority deadline, and waiting lists if late.



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GRANTS

- ▶ \$550,000 in grants for preventing nonrelative foster care placements to nonprofit organizations to provide support for relative caregivers.
- ▶ \$150,000 grant for studies on pregnant and parenting homeless youth.



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STATEWIDE REPORTING SYSTEM?

- ▶ Commissioner of the Department of Children, Youth and Families required to conduct a review of child maltreatment reporting processes in other states, and make recommendations on the benefits, costs, and challenges of implementing a common, statewide reporting system.
- ▶ Report due June 1, 2025



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SUPREME COURT COUNCIL ON CHILD PROTECTION & MALTREATMENT PREVENTION

- ▶ Reports to governor, chief justice, and legislative committee.
- ▶ Must develop a comprehensive blueprint for improvement of child welfare system.
- ▶ Progress report due July 2025, with final report due in January 2026 and dissolves after that.



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DHS

- ▶ Statutory infrastructure of Department of Children, Youth, and Families
- ▶ \$9.657 million dollars to begin modernizing the Social Services Information System
 - ▶ a significant reduction from Governor Walz's previously proposed \$15 million.
- ▶ Improvements to child welfare information systems.
 - ▶ Must track financial information, statewide reports provided, and track demographics on children in the system.
 - ▶ Provides that the ombudsperson for families, American Indian families, and foster youth have access to case-by-case information.
- ▶ Establish a systemic critical incident review team to review child fatalities and near fatalities and to identify systemic changes to improve child safety and well-being.



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ITEMS OF INTEREST THAT DID NOT PASS

- ▶ Fiscal audit of the state's child welfare system
- ▶ Creation of Family Foster Care and Adoption Legislative Task Force
- ▶ Creation of Child Protection Advisory Council
- ▶ Elimination of parental fees for out-of-home placements



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QUESTIONS

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