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Active Efforts in Child Protection Cases
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CHILDREN'S LAW CENTER
OF MINNESOTA

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Overview of Active Efforts

When Would Active Efforts Be Needed?

It depends on which type of case is before the court.

Which Cases Require Active Efforts?

Indian Child Welfare Act (ICWA) & Minnesota Indian Family Preservation Act (MIFPA) cases; AND

Minnesota's African American Family Preservation & Child Welfare Disproportionality Act (MAAFPCWDA) cases.



Overview of Active Efforts

Active Efforts are required on ICWA and MIFPA cases
(Reasonable Efforts are required on non ICWA cases).

Presently, some MAAFPCWDA cases require Active Efforts. On January 1, 2025, MAAFPCWDA went into effect in Hennepin and Ramsey counties with a phase-in process of quarterly increased case percentages until January 1, 2027, when all applicable MAAFPCWDA cases will require Active Efforts throughout the state.



When During a Case are Active Efforts Required

The following are specific points during a case when the court is required to make findings of the agency's Active Efforts findings:

- First, prior to removal of the children from the home, active efforts to prevent the removal are needed;
- Second, while the child is out of the home, active efforts to reunify and correct the conditions that led to the out of home placement are needed; and
- Third, active efforts are needed prior to and during any permanency proceeding for a change in custody.



Active Efforts in ICWA & MIFPA Matters

Minnesota defines Active Efforts for ICWA & MIFPA matters:

“Active efforts” means a rigorous and concerted level of effort that is ongoing throughout the involvement of the child-placing agency to continuously involve the Indian child's Tribe and that uses the prevailing social and cultural values, conditions, and way of life of the Indian child's Tribe to preserve the Indian child's family and prevent placement of an Indian child and, if placement occurs, to return the Indian child to the child's family at the earliest possible time.

Active efforts under section 260.762 require a higher standard than reasonable efforts to preserve the family, prevent breakup of the family, and reunify the family. Active efforts include reasonable efforts as required by Title IV-E of the Social Security Act, United States Code, title 42, sections 670 to 679c.

Minn. Stat. § 260.755, Subd. 1.a. (2025) (emphasis added).

Why Higher Protections on ICWA & MIFPA Matters

ICWA was enacted to address the disproportionate removal of Indigenous children from their families by state and private welfare agencies. See Brief of 180 Indian Tribes & 35 Tribal Organizations as Amici Curiae Supporting Petitioners at 3, *Haaland v. Brackeen*, 599 U.S. 255 (2023).

MIFPA through Minnesota's 2007 Tribal-State Agreement noted "The purpose of this Agreement is to protect the long term best interests, as defined by the tribes, of Indian children and their families, by maintaining the integrity of the Tribal family, extended family and the child's tribal relationship." 2007 TRIBAL/STATE AGREEMENT Part 1(B)(Feb. 2007).

When are Active Efforts Required In ICWA/MIFPA

First, to prevent removal of Indian children from their families prior to court involvement. MINN. STAT. § 260.762, subd. 2a (2025).

Active efforts to preserve the Indian child's family include efforts to prevent placement of the Indian child to correct the conditions that led to the placement by ensuring remedial services and rehabilitative programs designed to prevent the breakup of the family were provided in a manner consistent with the prevailing social and cultural conditions of the Indian child's Tribe and in partnership with the Indian child, the Indian child's parents, the Indian custodian, extended family members, and Tribe, and that these efforts have proved unsuccessful. *Id.* at subd.2a(a)(emphasis added).



Requirements At Emergency Protective Care Hearings

- At the Emergency Protective Care (EPC) hearing, the court must find by clear and convincing evidence the emergency removal is necessary to prevent **imminent physical damage or harm to the child** and the child is to be immediately returned to their parent or custodian when this standard no longer exists. MINN. STAT. § 260.758, subd. 5.
- Imminent physical damage or harm means that 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. MINN. STAT. § 260.755, subd. 6a.
- This higher emergency removal standard continues every 30 days until the court receives testimony from a qualified expert witness (QEW) that the continued custody of the child by the parent or Indian custodian is **likely to suffer serious emotional or physical damage** to the child. *Id.* See also, MINN. STAT. § 260.771, subd. 6 (a).



Requirements At Emergency Protective Care Hearings

In addition to the elevated emergency standard for removal, the court must also make a finding that active efforts were made by the child-placing agency to preserve the Indian child's family and prevent removal of the children before the court can order a child's out-of-home placement. MINN. STAT. § 260.762, subd. 2a (b). This is usually found in the petition, but testimony can be provided as well.

Such a review includes “whether active efforts were made at the earliest point possible to inquire into the child's heritage, to identify any federally recognized Indian Tribe the child may be affiliated with, to notify all potential Tribes at the earliest point possible, and to request participation of the Indian child's Tribe.” *Id.*



Requirements At Emergency Protective Care Hearings

Additionally active efforts examples may include efforts made to provide the family with culturally relevant services and assistance and efforts made to request participation from the Tribe, provide them with information and updates on the case, and actively involve them in any family assessments, safety planning, or other services to the family. This includes consulting the Tribe for guidance on family structure, customs, and child rearing practices, and requesting assistance in identifying culturally appropriate services. *Id.* See also *In re Dependency of G.J.A.*, 489 P.3d 631, 647 (Wash. 2021) (internal citations omitted).



Requirements At Emergency Protective Care Hearings

The court should also inquire as to what efforts did the agency make to follow ICWA/MIFA's placement preferences when determining the emergency placement.



Requirements At Emergency Protective Care Hearings

The placement preferences are as follows:

- (1) a noncustodial parent or Indian custodian;
- (2) a member of the Indian child's extended family;
- (3) a foster home licensed, approved, or specified by the Indian child's Tribe;
- (4) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (5) 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. MINN. STAT. § 260.773, subd. 3.



Active Efforts Requirements Following Removal

Second, the agency must make active efforts to reunify and correct the conditions that led to the out-of-home placement.

Active efforts at this stage require that “if placement occurs, to return the Indian child to the Indian child's family at the earliest possible time.” MINN. STAT. § 260.755, subd.1a.

Examples of active efforts at this stage can include involving the Tribe in service planning throughout the duration of the child's involvement with the agency and requesting that the Tribe participate in evaluating the family circumstances, developing culturally-relevant case plans, and identifying family and Tribal resources to help prevent removal of the child and provide a safe home environment. MINN. STAT. § 260.762, subd. 2a (b).



Active Efforts Requirements Following Removal

Active efforts may include efforts made to identify extended family members and culturally appropriate placement options and to help these individuals overcome any licensing or financial barriers to placement. MINN. STAT. § 260.762, subd. 2a (b).

Additionally, extended family members for placement under MIFPA also include individuals that are considered family members under Tribal customs, not Euro-American customs. See, MINN. STAT. § 260.755, subd. 5b.

Active efforts made to ensure that visitation occurs between the child and their parent, custodian, siblings, and extended family members in a natural, noninstitutional setting. MINN. STAT. § 260.762, subd. 2a (b).



Practice Tip

Remember that at each step of the proceeding, the agency must demonstrate its active efforts. **Make sure the agency has made specific identified active efforts.** Since active efforts require an ongoing burden by the agency, **the agency's past active efforts are not enough.** If your client's wishes are not being realized, consider whether this is a result of the agency failing to provide appropriate services and supports to meet its active efforts burden.



Practice Tip

If your client is not happy in her placement, ask your client who is important to her and to describe the nature of their relationship. Seek out support from other parties in the case, including but not limited to the Tribal Representative. Do not forgot that the Tribal Representative is a critical party to any ICWA/MIFPA case and their support of your client's requests can be extremely helpful.



Practice Tip

Ensure that you have received case plans and any safety plans the agency is or has prepared regarding your client and their family so you may discuss the plans with your client and ask your client if there are any other individuals that would help support your client, so these individuals are also being considered.



Active Efforts Requirements Regarding Permanency

Minnesota also requires active efforts when an Indian child cannot safely return home, and the agency seeks to finalize a permanent change in the parental rights and custody of the child. Specifically, when such a permanent change in parental rights or custody is necessary, active efforts are required to ensure the Indian child retains meaningful connections to the Indian child's family, extended family, and Tribe. MINN. STAT. § 260.755, subd. 1a.

Examples of such active efforts may include efforts made to identify extended family members and culturally appropriate placement options and to help these individuals overcome any licensing or financial barriers to placement.

Practice Tip

As permanency proceedings approach, ensure the parties and the court are aware of your client's wishes regarding sibling and family contact and visitation, so that sibling and family contact agreements or visitation schedules may be prepared and included in court orders.



Why Active Efforts in MAAFPCWDA Matters?

Minnesota's African American Family Preservation Child Welfare Disproportionality Act (AAFPCWDA) was passed in 2024 to address concerns regarding the overrepresentation of African American children and other disproportionately represented children in Minnesota's child welfare system population when compared to the representation of those children in Minnesota's total child population.

On January 1, 2025, MAAFPCWDA went into effect in Hennepin and Ramsey counties with a phase-in process of quarterly increased case percentages until January 1, 2027, when all applicable MAAFPCWDA cases will require Active Efforts statewide.



Who is Affected by MAAFPACWDA?

An African American child means a person under 18 years of age having origins in Africa, including a child of two or more races who has at least one parent with origins in Africa. MINN. STAT. § 260.63, subd. 4 (2025)

A Disproportionately Represented child includes any 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 of children, youth, and families or the commissioner's designee. *Id.* at Subd. 10

A child's race, culture, or ethnicity is determined based upon a child's self-identification or identification of a child's race, culture, or ethnicity as reported by the child's parent or guardian. *Id.*



Why Elevated/Active Efforts in MAAFFPCWDA Cases?

The Act's purposes are as follows:

- (1) protect the best interests of African American and disproportionately represented children;
- (2) promote the stability and security of African American and disproportionately represented children and their families by establishing minimum standards to prevent the arbitrary and unnecessary removal of African American and disproportionately represented children from their families; and
- (3) improve permanency outcomes, including family reunification, for African American and disproportionately represented children. Minn. Stat. § 260.62 (a).

Active Efforts defined in MAAFPCWDA

"Active efforts" means *a rigorous and concerted level of effort* that the responsible social services agency must continuously make throughout the time that the responsible social services agency is involved with an African American or a disproportionately represented child and the child's family.

To provide active efforts to preserve an African American or a disproportionately represented child's family, the responsible social services agency must continuously involve an African American or a disproportionately represented child's family in all services for the family, including case planning and choosing services and providers, and inform the family of the ability to file a report of noncompliance with this act with the commissioner through the child welfare compliance and feedback portal.

When providing active efforts, a responsible social services agency must consider an African American or a disproportionately represented child's family's social and cultural values at all times while providing services to the African American or disproportionately represented child and the child's family.

Active efforts includes continuous efforts to preserve an African American or a disproportionately represented child's family and to prevent the out-of-home placement of an African American or a disproportionately represented child. If an African American or a disproportionately represented child enters out-of-home placement, the responsible social services agency must make active efforts to reunify the African American or disproportionately represented child with the child's family as soon as possible.

Active efforts sets a higher standard for the responsible social services agency than reasonable efforts to preserve the child's family, prevent the child's out-of-home placement, and reunify the child with the child's family. Active efforts includes the provision of reasonable efforts as required by Title IV-E of the Social Security Act, United States Code, title 42, sections 670 to 679c. Minn. Stat. § 260.63, subd. 2 (emphasis added).



When are Active Efforts Required

Active efforts are required at all stages (prior to removal, during the case and during permanency proceedings).



Removal Standard

"Imminent physical damage or harm" means that 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. (Similar to ICWA & MIFPA)

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. Minn. Stat. § 260.63, subd. 13 (emphasis added).



Removal Standard

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, a court shall not order a foster care or permanent out-of-home placement of an African American or a disproportionately represented child alleged to be in need of protection or services. Minn. Stat. § 260.64, subd. 3



Continued

Immediate return once placement is no longer necessary to prevent imminent physical damage or harm. (Similar to ICWA & MIFPA).

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.”



Active Efforts Prior to Removal

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 and the family's needs.

The responsible social services agency is not required to establish a safety plan:

- (1) in a case with allegations of sexual abuse or egregious harm;
- (2) when the parent is not willing to follow a safety plan;
- (3) when the parent has abandoned the child or is unavailable to follow a safety plan; or
- (4) when the parent has chronic substance use disorder issues and is unable to parent the child. Minn. Stat. § 260.64, subd. 2 (emphasis added).

Safety Plan Requirements

Prior to petitioning the court to remove an African American or a disproportionately represented child from the child's home, the responsible social services agency must work with the child's family to allow the child to remain in the child's home while implementing a safety plan based on the family's needs. The responsible social services agency must:

- (1) make active efforts to engage the child's parent or custodian and the child, when appropriate;
- (2) assess the family's cultural and economic needs and, if applicable, needs and services related to the child's disability;
- (3) hold a family group consultation meeting and connect the family with supports to establish a safety network for the family; and
- (4) provide support, guidance, and input to assist the family and the family's safety network with developing the safety plan. Minn. Stat. § 260.64, subd. 2

Safety Plan Requirements Continued

The safety plan must:

- (1) address the specific allegations impacting the child's safety in the home. If neglect is alleged, the safety plan must incorporate economic services and supports for the child and the child's family, if eligible, to address the family's specific needs and prevent neglect;
- (2) incorporate family and community support to ensure the child's safety while keeping the family intact; and
- (3) be adjusted as needed to address the child's and family's ongoing needs and support. Minn. Stat. § 260.64, subd. 2.



Practice Tip

Prior to the Emergency Protective Care (EPC) hearing review the petition for a summary of the agency's work with the child's family to allow the child to remain in the child's home while implementing a safety plan consistent Minn. Stat. § 260.64, subd. 2 as well as the components of the agency's safety plan or explanation of why a safety plan is not required.



Active Efforts During the Case Following Removal

Next, the agency must make active efforts to reunify and correct the conditions that led to the out-of-home placement.

Active efforts includes continuous efforts to preserve an African American or a disproportionately represented child's family and to prevent the out-of-home placement of an African American or a disproportionately represented child.

If an African American or a disproportionately represented child enters out-of-home placement, the responsible social services agency must make active efforts to reunify the African American or disproportionately represented child with the child's family as soon as possible. Minn. Stat. § 260.63, subd. 2.

Active Efforts During the Case

Active efforts are required to facilitate regular and frequent visitation between the child and parents or custodians, siblings, and relatives. If visitation is infrequent, the agency shall make active efforts to increase the frequency of visitation and address any barriers to visitation. Minn. Stat. § 260.641.

The responsible social services agency must assess the child's noncustodial or nonadjudicated parent's ability to care for the child before placing the child in foster care. Placement with noncustodial or nonadjudicated parent must be ordered if the parent is willing and able to provide daily care for the child and the agency must make active efforts to assist parent so child can be placed in the home. Minn. Stat. § 260.65 (b).

A relative search, notice, engagement, and placement consideration requirements under section 260C.22 apply to MAAFPCWD cases. *Id.* at (c)

Practice Tips

Review your client's Out-of-Home Placement Plan (OHPP) to ensure the agency has detailed details of how often your client will have contact with their siblings, parents and family members as well as what forms of contact will be used (in-person, FaceTime, phone, etc). If the plan is vague, request the court find the agency has not made active efforts regarding visitation.

If in-person visitation between your client and their siblings is not an option, consult with your client about other contact options, including phone calls, text messages, and video calls, and ask the court to order contact between your client and their siblings.

If your client's foster care provider or your client's sibling's foster care provider is not cooperating with sibling visits, bring it to the court and agency's attention and remind the court of the agency and foster care provider's duty to work together to coordinate visitation.



Active Efforts During the Case Following Removal

At each hearing regarding an African American or a disproportionately represented child who is alleged or adjudicated to be in need of child protective services, the court shall review whether the responsible social services agency has provided active efforts to the child and the child's family and shall require the responsible social services agency to provide evidence and documentation that demonstrate that the agency is providing culturally informed, strength-based, community-involved, and community-based services to the child and the child's family. Minn. Stat. § 260.64, subd. 3.



Practice Tip

As with ICWA & MIFPA, remember that at each step of the proceeding, the agency must demonstrate its active efforts. **Make sure the agency has made specific identified active efforts.** Since active efforts require an ongoing burden by the agency, **the agency's past active efforts are not enough.** If your client's wishes are not being realized, consider whether this is a result of the agency failing to provide appropriate services and supports to meet its active efforts burden.



What if No Active Efforts Found?

When determining whether the responsible social services agency has made active efforts to preserve the child's family, the court shall make findings regarding whether the responsible social services agency made appropriate and meaningful services available to the child's family based upon the family's specific needs.

If a court determines that the responsible social services agency did not make active efforts to preserve the family as required by this section, the court shall order the responsible social services agency to immediately provide active efforts to the child and child's family to preserve the family. Minn. Stat. § 260.64, subd. 4.



Preferred Permanency

There is a clearly stated preferred permanency option under MAAFPCWDA and the preference is for a transfer of custody to the noncustodial parent or a willing and able relative when an African American or disproportionately represented child cannot be returned to the child's parent. Minn. Stat. § 260.67, subd. 1

“Willing and able” relative is different from “Fit and willing” under ICWA & MIFPA and 260C cases.



Restrictions on Termination of Parental Rights

A Termination of Parental Rights (TPR) cannot be based on failure to complete case plan requirements.

TPRs 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; and
- 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. Minn. Stat. § 260.67, subd. 2.



Termination of Parental Rights Exceptions

The court may terminate parental rights if

- o A Transfer of custody not possible because child has no willing or able noncustodial parent or relative; AND
- o Abandonment,
- o Palpable unfitness,
- o Active efforts have failed to correct conditions, or
- o Egregious harm. Minn. Stat. § 260.67, subd. 3.

The court may terminate parental rights if a parent desires to voluntarily terminate the parent's own parental rights for good cause under section 260C.301, subdivision 1, paragraph (a). Minn. Stat. § 260.67, subd. 4.



Questions?

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