



THOMAS J. VILSACK  
GOVERNOR

**OFFICE OF THE GOVERNOR**

SALLY J. PEDERSON  
LT. GOVERNOR

May 30, 2003

The Honorable Chester Culver  
Secretary of State  
State Capitol Building  
L O C A L

Dear Mr. Secretary:

I hereby transmit:

**Senate File 354**, an Act implementing the federal Indian Child Welfare Act.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Vilsack".

Thomas J. Vilsack  
Governor

TJV:jmc

cc: Secretary of the Senate  
Chief Clerk of the House





SENATE FILE 354

AN ACT  
IMPLEMENTING THE FEDERAL INDIAN CHILD WELFARE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 232.7 IOWA INDIAN CHILD WELFARE ACT.

1. If a proceeding held under this chapter involves an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian child welfare Act under chapter 232B, the proceeding and other actions taken in connection with the proceeding or this chapter shall comply with chapter 232B.

2. In any proceeding held or action taken under this chapter involving an Indian child, the applicable requirements of the federal Adoption and Safe Families Act of 1999, Pub. L. No. 105-89, shall be applied to the proceeding or action in a manner that complies with chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95-608.

Sec. 2. NEW SECTION. 232B.1 SHORT TITLE.

This chapter shall be known and may be cited as the "Iowa Indian Child Welfare Act".

Sec. 3. NEW SECTION. 232B.2 PURPOSE -- POLICY OF STATE.

The purpose of the Iowa Indian child welfare Act is to clarify state policies and procedures regarding implementation of the federal Indian Child Welfare Act, Pub. L. No. 95-608, as codified in 25 U.S.C. chapter 21. It is the policy of the state to cooperate fully with Indian tribes and tribal citizens in Iowa in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced. This cooperation includes recognition by the state that Indian tribes have a continuing and compelling

governmental interest in an Indian child whether or not the child is in the physical or legal custody of an Indian parent, Indian custodian, or an Indian extended family member at the commencement of a child custody proceeding or the child has resided or domiciled on an Indian reservation. The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the federal Indian Child Welfare Act and other applicable law, designed to prevent the child's voluntary or involuntary out-of-home placement and, whenever such placement is necessary or ordered, by placing the child, whenever possible, in a foster home, adoptive home, or other type of custodial placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

Sec. 4. NEW SECTION. 232B.3 DEFINITIONS.

For the purposes of this chapter unless the context otherwise requires:

1. "Adoptive placement" means the permanent placement of an Indian child for adoption including, but not limited to, any action under chapter 232, 600, or 600A resulting in a final decree of adoption. "Adoptive placement" does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child's parents.

2. "Best interest of the child" means the use of practices in accordance with the federal Indian Child Welfare Act, this chapter, and other applicable law, that are designed to prevent the Indian child's voluntary or involuntary out-of-home placement, and whenever such placement is necessary or ordered, placing the child, to the greatest extent possible, in a foster home, adoptive placement, or other type of custodial placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.

3. "Child custody proceeding" means a voluntary or involuntary proceeding that may result in an Indian child's adoptive placement, foster care placement, preadoptive placement, or termination of parental rights.

4. "Foster care placement" means the temporary placement of an Indian child in an individual or agency foster care placement or in the personal custody of a guardian or conservator prior to the termination of parental rights, from which the child cannot be returned upon demand to the custody of the parent or Indian custodian but there has not been a termination of parental rights. "Foster care placement" does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child's parents.

5. "Indian" means a person who is a member of an Indian tribe, or is eligible for membership in an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. § 1606.

6. "Indian child" or "child" means an unmarried Indian person who is under eighteen years of age or a child who is under eighteen years of age that an Indian tribe identifies as a child of the tribe's community.

7. "Indian child's family" or "extended family member" means an adult person who is an Indian child's family member or extended family member under the law or custom of the Indian child's tribe or, in absence of such law or custom, an adult person who has any of the following relationships with the Indian child:

- a. Parent.
- b. Sibling.
- c. Grandparent.
- d. Aunt or uncle.
- e. Cousin.
- f. Clan member.
- g. Band member.
- h. Brother-in-law.
- i. Sister-in-law.
- j. Niece.
- k. Nephew.
- l. Stepparent.

8. "Indian child's tribe" means a tribe in which an Indian child is a member or eligible for membership.

9. "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law, has legal or temporary physical custody of an Indian child.

10. "Indian organization" means any of the following entities that is owned or controlled by Indians, or a majority of the members are Indians:

- a. A group.
- b. An association.
- c. A partnership.
- d. A corporation.
- e. Other legal entity.

11. "Indian tribe" or "tribe" means an Indian tribe, band, nation, or other organized Indian group, or a community of Indians, including any Alaska native village as defined in 43 U.S.C. § 1602(c) recognized as eligible for services provided to Indians by the United States secretary of the interior because of the community members' status as Indians.

12. "Parent" means a biological parent of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "Parent" does not include an unwed father whose paternity has not been acknowledged or established. Except for purposes of the federal Indian Child Welfare Act as codified in 25 U.S.C. § 1913(b), (c), and (d), 1916, 1917, and 1951, "parent" does not include a person whose parental rights to that child have been terminated.

13. "Preadoptive placement" means the temporary placement of an Indian child in an individual or agency foster care placement after the termination of parental rights, but prior to or in lieu of an adoptive placement. "Preadoptive placement" does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child's parents.

14. "Reservation" means Indian country as defined in 18 U.S.C. § 1151 or land that is not covered under that definition but the title to which is either held by the United States in trust for the benefit of an Indian tribe or Indian person or held by an Indian tribe or Indian person subject to a restriction by the United States against alienation.

15. "Secretary of the interior" means the secretary of the United States department of the interior.

16. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship. "Termination of parental rights" does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child's parents.

17. "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

Sec. 5. NEW SECTION. 232B.4 APPLICATION OF CHAPTER -- EXEMPTIONS -- DETERMINATION OF INDIAN STATUS.

1. 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, or an Indian extended family member or another person at the commencement of the proceedings or whether the child has resided or domiciled on or off an Indian reservation.

2. The court shall require a party seeking the foster care placement of, termination of parental rights over, or the adoption of, an Indian child to seek to determine whether the child is an Indian child through contact with any Indian tribe in which the child may be a member or eligible for membership, the child's parent, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe, including but not limited to the United States department of the interior.

3. A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony attesting to such status by a person authorized by the tribe to provide that determination, shall be conclusive. A written determination by an Indian tribe, or testimony by a person authorized by the tribe to provide that determination or testimony, that a child is not a member of or eligible for

membership in that tribe shall be conclusive as to that tribe. If an Indian tribe does not provide evidence of the child's status as an Indian child, the court shall determine the child's status.

4. The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interest of the child and to ensure compliance with the notice requirements of this chapter.

Sec. 6. NEW SECTION. 232B.5 INDIAN CHILD CUSTODY PROCEEDINGS -- JURISDICTION -- NOTICE -- TRANSFER OF PROCEEDINGS.

1. An Indian tribe has jurisdiction exclusive as to this state over any child custody proceeding held in this state involving an Indian child who resides or is domiciled within the reservation of that tribe, except when the jurisdiction is otherwise vested in this state by existing federal law. If an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

2. The federal Indian Child Welfare Act and this chapter are applicable without exception in any child custody proceeding involving an Indian child. A state court does not have discretion to 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.

3. In a child custody proceeding, the court or any party to the proceeding shall be deemed to know or have reason to know that an Indian child is involved whenever any of the following circumstances exist:

a. A party to the proceeding or the court has been informed by any interested person, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family that the child is or may be an Indian child.

b. The child who is the subject of the proceeding gives the court reason to believe the child is an Indian child.

c. The court or a party to the proceeding has reason to believe the residence or domicile of the child is in a predominantly Indian community.

4. In any involuntary child custody proceeding, including review hearings following an adjudication, the court shall establish in the record that the party seeking the foster care placement of, or termination of parental rights over, or the adoption of an Indian child has sent notice by registered mail, return receipt requested, to all of the following:

- a. The child's parents.
- b. The child's Indian custodians.
- c. Any tribe in which the child may be a member or eligible for membership.

5. If the identity or location of the child's parent, Indian custodian, or tribe cannot be determined, the notice under subsection 4 shall be provided to the secretary of the interior, who shall have fifteen days after receipt of the notice to provide the notice to the child's parent, Indian custodian, and tribe. A foster care placement or termination of parental rights proceeding involving the child shall not be held until at least ten days after receipt of notice by the child's parent, Indian custodian, and tribe, or the secretary of the interior. Upon request, the child's parent or Indian custodian or tribe shall be granted up to twenty additional days after receipt of the notice to prepare for the proceeding.

6. The court shall also establish in the record that a notice of any involuntary custody proceeding has been sent to the Indian child's tribe. The tribe may provide notice of the proceeding to any of the child's extended family members.

7. The notice in any involuntary child custody proceeding involving an Indian child shall be written in clear and understandable language and shall include all of the following information:

- a. The name and tribal affiliation of the Indian child.
- b. A copy of the petition by which the proceeding was initiated.
- c. A statement listing the rights of the child's parents, Indian custodians, and tribes and, if applicable, the rights of the Indian child's family. The rights shall include all of the following:

- (1) The right to intervene in the proceeding.
- (2) The right to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe.



(3) The right to be granted up to an additional twenty days from the receipt of the notice to prepare for the proceeding.

(4) The right to request that the court grant further extensions of time.

(5) In the case of an extended family member, the right to intervene and be considered as a preferred placement for the child.

d. A statement of the potential legal consequences of an adjudication on the future custodial rights of the child's parents or Indian custodians.

e. A statement that if the parents or Indian custodians are unable to afford counsel in an involuntary proceeding, counsel will be appointed to represent the parents or custodians.

f. A statement that the court may appoint counsel for the child upon a finding that the appointment is in the best interest of the child.

g. A statement that the information contained in the notice, petition, pleading, and other court documents is confidential.

h. A statement that the child's tribe may provide notice of the proceeding to any of the child's extended family members along with copies of other related documents.

8. In a voluntary child custody proceeding involving an Indian child, including but not limited to a review hearing, the court shall establish in the record that the party seeking the foster care placement of, termination of parental rights to, or the permanent placement of, an Indian child has sent notice at least ten days prior to the hearing by registered mail, return receipt requested, to all of the following:

a. The child's parents, except for a parent whose parental rights have been terminated.

b. The child's Indian custodians, except for a custodian whose parental or Indian custodian rights have been terminated.

c. Any tribe in which the child may be a member or eligible for membership.

9. The notice in a voluntary child custody proceeding involving an Indian child shall be written in clear and understandable language and shall include all of the following information:

- a. The name and tribal affiliation of the child.
  - b. A copy of the petition by which the proceeding was initiated.
  - c. A statement listing the rights of the child's parents, Indian custodians, Indian tribe or tribes, and, if applicable, extended family members. The rights shall include all of the following:
    - (1) The right to intervene in the proceeding.
    - (2) The right to petition the court to transfer a foster care placement or termination of parental rights proceeding to the tribal court of the Indian child's tribe.
    - (3) In the case of extended family members, the right to intervene and be considered as a preferred placement for the child.
  - d. A statement that the information contained in the notice, petition, pleading, and any other court document shall be kept confidential.
  - e. A statement that the child's tribe may provide notice of the proceeding to any of the child's extended family members along with copies of other related documents.
10. Unless either of an Indian child's parents objects, in any child custody proceeding involving an Indian child who is not domiciled or residing within the jurisdiction of the Indian child's tribe, the court shall transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the petition of any of the following persons:
- a. Either of the child's parents.
  - b. The child's Indian custodian.
  - c. The child's tribe.
11. Notwithstanding entry of an objection to a transfer of proceedings as described in subsection 10, the court shall reject any objection that is inconsistent with the purposes of this chapter, including but not limited to any objection that would prevent maintaining the vital relationship between Indian tribes and the tribes' children and would interfere with the policy that the best interest of an Indian child require that the child be placed in a foster or adoptive home that reflects the unique values of Indian culture.
12. A transfer of proceedings under subsection 10 may be declined by the tribal court of the Indian child's tribe. If the tribal court declines to assume jurisdiction, the state

court shall reassume jurisdiction and shall apply all of the following in any proceeding:

- a. The requirements of the federal Indian Child Welfare Act.
- b. This chapter.
- c. The applicable provisions of any agreement between the Indian child's tribe and the state concerning the welfare, care, and custody of Indian children.

13. If a petition to transfer proceedings as described in subsection 10 is filed, the court shall find good cause to deny the petition only if one or more of the following circumstances are shown to exist:

- a. The tribal court of the child's tribe declines the transfer of jurisdiction.
- b. The tribal court does not have subject matter jurisdiction under the laws of the tribe or federal law.
- c. Circumstances exist in which the evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.
- d. An objection to the transfer is entered in accordance with subsection 10.

14. The Indian child's tribe or tribes and Indian custodian have the right to intervene at any point in any foster care placement or termination of parental rights proceeding involving the child. The Indian child's tribe shall also have the right to intervene at any point in any adoption proceeding involving the child. Any member of the Indian child's family may intervene in an adoption proceeding involving the child for the purpose of petitioning the court for the adoptive placement of the child in accordance with the order of preference provided for in this chapter.

15. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the Indian child custody proceedings.

16. In any proceeding in which the court determines indigency of the Indian child's parent or Indian custodian, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination of parental rights. The child shall also have the right to court-appointed counsel in any removal, placement, termination of parental rights, or other permanency proceedings.

17. Each party to a foster care placement or termination of parental rights proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based.

18. Any person or court involved in the foster care, preadoptive placement, or adoptive placement of an Indian child shall use the services of the Indian child's tribe or tribes, whenever available through the tribe or tribes, in seeking to secure placement within the order of placement preference established in section 232B.9 and in the supervision of the placement.

19. A party seeking an involuntary foster care placement of or termination of parental rights over an Indian child shall provide evidence to 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. The court shall not order the placement or termination, unless the evidence of active efforts shows there has been a vigorous and concerted level of case work beyond the level that typically constitutes reasonable efforts as defined in sections 232.57 and 232.102. Reasonable efforts shall not be construed to be active efforts. The active efforts must be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregivers. Active efforts shall include but are not limited to all of the following:

a. A request to the Indian child's tribe to convene traditional and customary support and resolution actions or services.

b. Identification and participation of tribally designated representatives at the earliest point.

c. Consultation with extended family members to identify family structure and family support services that may be provided by extended family members.

d. Frequent visitation in the Indian child's home and the homes of the child's extended family members.

e. Exhaustion of all tribally appropriate family preservation alternatives.

f. Identification and provision of information to the child's family concerning community resources that may be able to offer housing, financial, and transportation assistance and actively assisting the family in accessing the community resources.

20. The state of Iowa recognizes that an Indian tribe may contract with another Indian tribe for supervision regarding placement, case management, and the provision of services to an Indian child.

Sec. 7. NEW SECTION. 232B.6 EMERGENCY REMOVAL OF INDIAN CHILD -- FOSTER CARE PLACEMENT -- TERMINATION OF PARENTAL RIGHTS.

1. This chapter shall not be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, or is away from the child's parent or Indian custodian, or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. In a case of emergency removal of an Indian child, regardless of residence or domicile of the child, the state shall ensure that the emergency removal or placement terminates immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this chapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the child's parent or Indian custodian, as may be appropriate.

2. Within three business days following the issuance of an order of emergency removal or placement of an Indian child, the court issuing the order shall notify the Indian child's

tribe of the emergency removal or placement by registered mail, return receipt requested. The notice shall include the court order, the petition, if applicable, any information required by this chapter, and a statement informing the child's tribe of the tribe's right to intervene in the proceeding.

3. A motion, application, or petition commencing an emergency or temporary removal under section 232.79 or 232.95 or foster care placement proceeding under chapter 232 involving an Indian child shall be accompanied by all of the following:

a. An affidavit containing the names, tribal affiliations, and addresses of the Indian child, and of the child's parents and Indian custodians.

b. A specific and detailed account of the circumstances supporting the removal of the child.

c. All reports or other documents from each public or private agency involved with the emergency or temporary removal that are filed with the court and upon which any decision may be based. The reports shall include all of the following information, when available:

(1) The name of each agency.

(2) The names of agency administrators and professionals involved in the removal.

(3) A description of the emergency justifying the removal of the child.

(4) All observations made and actions taken by the agency.

(5) The date, time, and place of each such action.

(6) The signatures of all agency personnel involved.

(7) A statement of the specific actions taken and to be taken by each involved agency to effectuate the safe return of the child to the custody of the child's parent or Indian custodian.

4. An emergency removal or placement of an Indian child shall immediately terminate, and any court order approving the removal or placement shall be vacated, when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. In no case shall an emergency removal or placement order remain in effect for more than fifteen days unless, upon a showing that continuation of the order is necessary to prevent imminent physical damage or harm

to the child, the court extends the order for a period not to exceed an additional thirty days. If the Indian child's tribe has been identified, the court shall notify the tribe of the date and time of any hearing scheduled to determine whether to extend an emergency removal or placement order.

5. Upon termination of the emergency removal or placement order, the child shall immediately be returned to the custody of the child's parent or Indian custodian unless any of the following circumstances exist:

a. The child is transferred to the jurisdiction of the child's tribe.

b. In an involuntary foster care placement proceeding pursuant to the federal Indian Child Welfare Act, the court orders that the child shall be placed in foster care upon a determination, supported by clear and convincing evidence, including testimony by qualified expert witnesses, that custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

c. The child's parent or Indian custodian voluntarily consents to the foster care placement of the child pursuant to the provisions of the federal Indian Child Welfare Act.

6. a. Termination of parental rights over an Indian child shall not be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including the testimony of qualified expert witnesses, that the continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

b. Foster care placement of an Indian child shall not be ordered in the absence of a determination, supported by clear and convincing evidence, including the testimony of qualified expert witnesses, that the continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Sec. 8. NEW SECTION. 232B.7 PARENTAL RIGHTS -- VOLUNTARY TERMINATION OR FOSTER CARE PLACEMENT.

1. If an Indian child's parent or Indian custodian voluntarily consents to a foster care placement of the child or to termination of parental rights, the consent shall not be valid unless executed in writing and recorded before a judge

of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Notwithstanding section 600A.4 or any other provision of law, any consent for release of custody given prior to, or within ten days after, the birth of the Indian child shall not be valid.

2. An Indian child's parent or Indian custodian may withdraw consent to a foster care placement at any time and, upon the withdrawal of consent, the child shall be returned to the parent or Indian custodian.

3. In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

4. After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate the decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate the decree and return the child to the parent. However, an adoption which has been effective for at least two years shall not be invalidated under the provisions of this subsection unless otherwise permitted under state law.

Sec. 9. NEW SECTION. 232B.8 RETURN OF CUSTODY -- IMPROPER REMOVAL OF CHILD FROM CUSTODY -- PROTECTION OF RIGHTS OF PARENT OR INDIAN CUSTODIAN.

1. If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant the petition unless there is a showing, in a proceeding subject to the provisions of this chapter, that the return of custody is not in the best interest of the child.



2. If an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in accordance with the provisions of this chapter, except when an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

3. If a petitioner in an Indian child custody proceeding before a state court has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to a substantial and immediate danger or threat of such danger.

4. If another state or federal law applicable to a child custody proceeding held under state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this chapter, the court shall apply the higher standard.

Sec. 10. NEW SECTION. 232B.9 PLACEMENT PREFERENCES.

1. In any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

- a. A member of the Indian child's family.
- b. Other members of the Indian child's tribe.
- c. Another Indian family.
- d. A non-Indian family approved by the Indian child's tribe.
- e. A non-Indian family that is committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe.

2. An emergency removal, foster care, or preadoptive placement of an Indian child shall be in the least restrictive setting which most approximates a family situation and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given to the child's placement with one of the following in descending priority order:

- a. A member of the child's extended family.
- b. A foster home licensed, approved, or specified by the child's tribe.
- c. An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
- d. A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
- e. A non-Indian child foster care agency approved by the child's tribe.
- f. A non-Indian family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe.

3. To the greatest possible extent, a placement made in accordance with subsection 1 or 2 shall be made in the best interest of the child.

4. An adoptive placement of an Indian child shall not be ordered in the absence of a determination, supported by clear and convincing evidence including the testimony of qualified expert witnesses, that the placement of the child is in the best interest of the child.

5. Notwithstanding the placement preferences listed in subsections 1 and 2, if a different order of placement preference is established by the child's tribe or in a binding agreement between the child's tribe and the state entered into pursuant to section 232B.11, the court or agency effecting the placement shall follow the order of preference established by the tribe or in the agreement.

6. As appropriate, the placement preference of the Indian child or parent shall be considered. In applying the preferences, a consenting parent's request for anonymity shall also be given weight by the court or agency effecting the placement. Unless there is clear and convincing evidence that placement within the order of preference applicable under subsection 1, 2, or 5 would be harmful to the Indian child, consideration of the preference of the Indian child or parent or a parent's request for anonymity shall not be a basis for placing an Indian child outside of the applicable order of preference.

7. The prevailing social and cultural standards of the Indian community in which the parent or extended family

members of an Indian child reside, or with which such parent or extended family members maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied in qualifying any placement having a preference under this section. A determination of the applicable prevailing social and cultural standards shall be confirmed by the testimony or other documented support of qualified expert witnesses.

8. A record of each foster care placement, emergency removal, preadoptive placement, or adoptive placement of an Indian child, under the laws of this state, shall be maintained in perpetuity by the department of human services in accordance with section 232B.13. The record shall document the active efforts to comply with the applicable order of preference specified in this section.

9. The state of Iowa recognizes the authority of Indian tribes to license foster homes and to license agencies to receive children for control, care, and maintenance outside of the children's own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care or adoption. The department of human services and child-placing agencies licensed under chapter 238 may place children in foster homes and facilities licensed by an Indian tribe.

Sec. 11. NEW SECTION. 232B.10 TRIBALLY RECOGNIZED EXPERT WITNESSES -- STANDARD OF PROOF -- CHANGE OF PLACEMENT.

1. For the purposes of this section, unless the context otherwise requires, a "qualified expert witness" may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, spiritual leader, historian, or elder.

2. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that qualified expert witnesses with specific knowledge of the child's Indian tribe testify regarding that tribe's family organization and child-rearing practices, and regarding whether the tribe's culture, customs, and laws would support the placement of the child in foster care or the termination of parental rights on the grounds that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

3. In the following descending order of preference, a qualified expert witness is a person who is one of the following:

a. A member of the child's Indian tribe who is recognized by the child's tribal community as knowledgeable regarding tribal customs as the customs pertain to family organization or child-rearing practices.

b. A member of another tribe who is formally recognized by the Indian child's tribe as having the knowledge to be a qualified expert witness.

c. A layperson having substantial experience in the delivery of child and family services to Indians, and substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.

d. A professional person having substantial education and experience in the person's professional specialty and having substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.

e. A professional person having substantial education and experience in the person's professional specialty and having extensive knowledge of the customs, traditions, and values of the Indian child's tribe as the customs, traditions, and values pertain to family organization and child-rearing practices. Prior to accepting the testimony of a qualified expert witness described in this lettered paragraph, the court shall document the efforts made to secure a qualified expert witness described in paragraphs "a", "b", "c", and "d". The efforts shall include but are not limited to contacting the Indian child's tribe's governing body, that tribe's Indian Child Welfare Act office, and the tribe's social service office.

Sec. 12. NEW SECTION. 232B.11 AGREEMENTS WITH TRIBES FOR CARE AND CUSTODY OF INDIAN CHILDREN.

1. The director of human services or the director's designee shall make a good faith effort to enter into agreements with Indian tribes regarding jurisdiction over child custody proceedings and the care and custody of Indian children whose tribes have land within Iowa, including but not limited to the Sac and Fox tribe, the Omaha tribe, the Ponca

tribe, and the Winnebago tribe, and whose tribes have an Indian child who resides in the state of Iowa. An agreement shall seek to promote the continued existence and integrity of the Indian tribe as a political entity and the vital interest of Indian children in securing and maintaining a political, cultural, and social relationship with their tribes. An agreement shall assure that tribal services and Indian organizations or agencies are used to the greatest extent practicable in planning and implementing any action pursuant to the agreement concerning the care and custody of Indian children. If tribal services are not available, an agreement shall assure that community services and resources developed specifically for Indian families will be used.

2. If an agreement entered into between the tribe and the department of human services pertaining to the funding of foster care placements for Indian children conflicts with any federal or state law, the state in a timely, good faith manner shall agree to amend the agreement in a way that prevents any interruption of services to eligible Indian children.

3. An agreement entered into under this section may be revoked by either party by giving one hundred eighty days' advance written notice to the other party. The revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Sec. 13. NEW SECTION. 232B.12 PAYMENT OF FOSTER CARE EXPENSES.

1. If the department of human services has legal custody of an Indian child and that child is placed in foster care according to the placement preferences under section 232B.9 the state shall pay, subject to any applicable federal funding limitations and requirements, the cost of the foster care in the manner and to the same extent the state pays for foster care of non-Indian children, including the administrative and training costs associated with the placement. In addition, the state shall pay the other costs related to the foster care placement of an Indian child as may be provided for in an agreement entered into between a tribe and the state.

2. The department of human services may, subject to any applicable federal funding limitations and requirements and within funds appropriated for foster care services, purchase

care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state court order; and the purchase of the care is subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Sec. 14. NEW SECTION. 232B.13 RECORDS.

1. The department of human services shall establish an automated database where a permanent record shall be maintained of every involuntary or voluntary foster care, preadoptive placement, or adoptive placement of an Indian child that is ordered by a court of this state and in which the department was involved. The automated record shall document the active efforts made to comply with the order of placement preference specified in section 232B.9. An Indian child's placement record shall be maintained in perpetuity by the department of human services and shall include but is not limited to the name, birthdate, and gender of the Indian child, and the location of the local department office that maintains the original file and documents containing the information listed in subsection 2.

2. Each county department of human services, state-licensed child-placing agency, private attorney, and medical facility involved in the involuntary or voluntary foster care placement, preadoptive placement, or adoptive placement of an Indian child shall maintain in perpetuity a record of the placement. The record shall include, but is not limited to, all of the following information:

- a. The name and tribal affiliation of the child.
- b. The location of the child's Indian tribe or tribes.
- c. The names and addresses of the child's biological parents.
- d. The child's certificate of degree of Indian blood.
- e. The child's tribal enrollment or other membership documentation, if any.
- f. The child's medical records.
- g. The social and medical history of the child's biological family.
- h. The names, ages, and gender of the child's siblings.
- i. The names, ages, and gender of the child's kinship or extended family members.

j. The names and addresses of the child's adoptive parents.

k. The identity of any agency having files or information relating to the placement.

l. All reports concerning the child or the child's family, including detailed information regarding case plans and other efforts to rehabilitate the parents of the child.

m. A record of efforts made to place the child within and outside of the placement preferences under section 232B.9.

n. A statement of the reason for the final placement decision.

3. If a court orders the foster care, preadoptive placement, or adoptive placement of an Indian child, the court and any state-licensed child-placing agency involved in the placement shall provide the department of human services with the records described in subsections 1 and 2.

4. A record maintained pursuant to this section by the department of human services, a county department of human services, state-licensed child-placing agency, private attorney, or medical facility shall be made available within seven days of a request for the record by the Indian child's tribe or the secretary of the interior.

5. Upon the request of an Indian individual who is eighteen years of age or older, or upon the request of an Indian child's parent, Indian custodian, attorney, guardian ad litem, guardian, legal custodian, or caseworker of the Indian child, the department of human services, a county department of human services, state-licensed child-placing agency, private attorney, or medical facility shall provide access to the records pertaining to the Indian individual or child maintained pursuant to this section. The records shall also be made available upon the request of the descendants of the Indian individual or child. A record shall be made available within seven days of a request for the record by any person authorized by this subsection to make the request.

6. Upon application of an Indian individual who is eighteen years of age or older and was the subject of an adoptive placement, the court that entered the final decree shall inform the individual regarding the individual's tribal affiliation and any of the individual's biological parents, and shall provide such other information as may be necessary

to protect any rights arising from the individual's tribal affiliation. In addition, the court shall provide the individual, through an appropriate order, if necessary, with information described in subsection 2 as may be secured from the records maintained pursuant to subsection 2.

7. If a parent of an Indian child wishes to remain anonymous, identifying records concerning any such parent shall not be released unless necessary to secure, maintain, or enforce the Indian child's right to enrollment or membership in the child's Indian tribe, for determining a right or benefit associated with the enrollment or membership, or for determining a right to an inheritance.

Sec. 15. NEW SECTION. 232B.14 COMPLIANCE.

1. The department of human services, in consultation with Indian tribes, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the federal Indian Child Welfare Act and this chapter. These standards and procedures and the monitoring methods shall be integrated into the department's structure and plan for the federal government's child and family service review process and any program improvement plan resulting from that process.

2. A court of competent jurisdiction shall vacate a court order and remand the case for appropriate disposition for any of the following violations of this chapter:

a. Failure to notify an Indian parent, Indian custodian, or tribe.

b. Failure to recognize the jurisdiction of an Indian tribe.

c. Failure, without cause as specified under this chapter, to transfer jurisdiction to an Indian tribe appropriately seeking transfer.

d. Failure to give full faith and credit to the public acts, records, or judicial proceedings of an Indian tribe.

e. Failure to allow intervention by an Indian custodian or Indian tribe, or if applicable, an extended family member.

f. Failure to return the child to the child's parent or Indian custodian when removal or placement is no longer necessary to prevent imminent physical damage or harm.



g. Failure to provide the testimony of qualified expert witnesses as required by this chapter.

h. Any other violation that is not harmless error, including but not limited to a failure to comply with 25 U.S.C. § 1911, 1912, 1913, 1915, 1916, or 1917.

3. If a petitioner in an Indian child custody proceeding before a state court has improperly removed the child from the custody of the child's parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to a substantial and immediate danger or threat of such danger.

Sec. 16. Section 600.1, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If a proceeding held under this chapter involves an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian child welfare Act under chapter 232B, the proceeding and other actions taken in connection with the proceeding or this chapter shall comply with chapter 232B. In any proceeding held or action taken under this chapter involving an Indian child, the applicable requirements of the federal Adoption and Safe Families Act of 1999, Pub. L. No. 105-89, shall be applied to the proceeding or action in a manner that complies with chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95-608.

Sec. 17. Section 600A.3, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If a proceeding held under this chapter involves an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian child welfare Act under chapter 232B, the proceeding and other actions taken in connection with the proceeding or this chapter shall comply with chapter 232B. In any proceeding held or action taken under this chapter involving an Indian child, the applicable requirements of the federal Adoption and Safe Families Act of 1999, Pub. L. No. 105-89, shall be applied to the proceeding or action in a manner that complies with chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95-608.

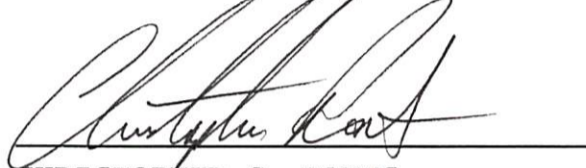
Sec. 18. COMPLIANCE ACTIVITIES. The initial review of compliance with the requirements of chapter 232B made pursuant to section 232B.14, as enacted by this Act, shall be completed by June 30, 2004.



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MARY E. KRAMER

President of the Senate



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CHRISTOPHER C. RANTS

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 354, Eightieth General Assembly.



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MICHAEL E. MARSHALL

Secretary of the Senate

Approved May 30, 2003



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THOMAS J. VILSACK

Governor