

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 casework 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.

2003 Acts, ch 153, §6