

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.

2003 Acts, ch 153, §7