

260.771 CHILD PLACEMENT PROCEEDINGS.

Subdivision 1. **Indian tribe jurisdiction.** An Indian tribe has exclusive jurisdiction over a child placement proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except where jurisdiction is otherwise vested in the state by existing federal law. When an Indian child is a ward of the tribal court, the Indian tribe retains exclusive jurisdiction, notwithstanding the residence or domicile of the child.

Subd. 2. **Court determination of tribal affiliation of child.** In any child placement proceeding, the court shall establish whether an Indian child is involved and the identity of the Indian child's tribe. This chapter and the federal Indian Child Welfare Act are applicable without exception in any child custody proceeding, as defined in the federal act, involving an Indian child. 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, Indian extended family member, or other person at the commencement of the proceedings. A court shall not determine the applicability of this chapter or the federal Indian Child Welfare Act to a child custody proceeding based upon whether an Indian child is part of an existing Indian family or based upon the level of contact a child has with the child's Indian tribe, reservation, society, or off-reservation community.

Subd. 3. **Transfer of proceedings.** (a) In a proceeding for: (1) the termination of parental rights; or (2) the involuntary foster care placement of an Indian child not within the jurisdiction of subdivision 1, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the jurisdiction of the tribe absent objection by either parent, upon the petition of either parent, the Indian custodian, or the Indian child's tribe. The transfer is subject to declination by the tribal court of the tribe.

(b) In a proceeding for the preadoptive or adoptive placement of an Indian child not within the jurisdiction of subdivision 1, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the jurisdiction of the tribe. The transfer is subject to declination by the tribal court of the tribe. For the purposes of this subdivision, "preadoptive placement" and "adoptive placement" have the meanings give in section 260.755, subdivision 3.

(c) At any point in a proceeding for finalizing a permanency plan, the court, in the absence of good cause to the contrary and in the absence of an objection by either parent, shall transfer the proceeding to tribal court for the purpose of achieving a customary adoption or other culturally appropriate permanency option. This transfer shall be made upon the petition of a parent whose parental rights have not been terminated, the Indian custodian, or the Indian child's tribe. The transfer is subject to declination by the tribal court of the tribe.

Subd. 3a. **Good cause to deny transfer.** (a) Establishing good cause to deny transfer of jurisdiction to a tribal court is a fact-specific inquiry to be determined on a case-by-case basis. Socioeconomic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems must not be considered in a determination that good cause exists. The party opposed to transfer of jurisdiction to a tribal court has the burden to prove by clear and convincing evidence that good cause to deny transfer exists. Opposition to a motion to transfer jurisdiction to tribal court must be in writing and must be served upon all parties.

(b) The court may find good cause to deny transfer to tribal court if:

(1) the Indian child's tribe does not have a tribal court or any other administrative body of a tribe vested with authority over child custody proceedings, as defined by the Indian Child Welfare Act, United States

Code, title 25, chapter 21, to which the case can be transferred, and no other tribal court has been designated by the Indian child's tribe; or

(2) the evidence necessary to decide the case could not be adequately 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 any means permitted in the tribal court's rules. Without evidence of undue hardship, travel distance alone is not a basis for denying a transfer.

Subd. 4. Effect of tribal court placement orders. To the extent that any child subject to sections 260.755 to 260.835 is otherwise eligible for social services, orders of a tribal court concerning placement of such child shall have the same force and effect as orders of a court of this state. In any case where the tribal court orders placement through a local social services agency, the court shall provide to the local agency notice and an opportunity to be heard regarding the placement. Determination of county of financial responsibility for the placement shall be determined by the local social services agency in accordance with section 256G.02, subdivision 4. Disputes concerning the county of financial responsibility shall be settled in the manner prescribed in section 256G.09.

Subd. 5. Indian tribe agreements. The commissioner is hereby authorized to enter into agreements with Indian tribes pursuant to United States Code, title 25, section 1919, respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between the state and an Indian tribe.

Subd. 6. Qualified expert witness and evidentiary requirements. (a) In an involuntary foster care placement proceeding, the court must determine by clear and convincing evidence, including testimony of a qualified expert witness, 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 as defined in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(e). In a termination of parental rights proceeding, the court must determine by evidence beyond a reasonable doubt, including testimony of a qualified expert witness, 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 as defined in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(f).

(b) The local social services agency or any other party shall make diligent efforts to locate and present to the court a qualified expert witness designated by the Indian child's tribe. The qualifications of a qualified expert witness designated by the child's tribe are not subject to a challenge in Indian child custody proceedings.

(c) If a party cannot obtain testimony from a tribally designated qualified expert witness, the party shall submit to the court the diligent efforts made to obtain a tribally designated qualified expert witness.

(d) If clear and convincing evidence establishes that a party's diligent efforts cannot produce testimony from a tribally designated qualified expert witness, the party shall demonstrate to the court that a proposed qualified expert witness is, in descending order of preference:

(1) a member of the child's tribe who is recognized by the Indian child's tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices; or

(2) an Indian person from an Indian community who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and contemporary and traditional child-rearing practices of the Indian child's tribe.

If clear and convincing evidence establishes that diligent efforts have been made to obtain a qualified expert witness who meets the criteria in clause (1) or (2), but those efforts have not been successful, a party may use an expert witness, as defined by the Minnesota Rules of Evidence, rule 702, who has substantial experience in providing services to Indian families and who has substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community. The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

(e) The court may allow alternative methods of participation and testimony in state court proceedings by a qualified expert witness, such as participation or testimony by telephone, videoconferencing, or other methods.

Subd. 7. Order of placement preference; deviation. (a) The court must follow the order of placement preferences required by the Indian Child Welfare Act of 1978, United States Code, title 25, section 1915, when placing an Indian child.

(b) The court may place a child outside the order of placement preferences only if the court determines there is good cause based on:

(1) the reasonable request of the Indian child's parents, if one or both parents attest that they have reviewed the placement options that comply with the order of placement preferences;

(2) the reasonable request of the Indian child if the child is able to understand and comprehend the decision that is being made;

(3) the testimony of a qualified expert designated by the child's tribe and, if necessary, testimony from an expert witness who meets qualifications of subdivision 6, paragraph (d), clause (2), that supports placement outside the order of placement preferences due to extraordinary physical or emotional needs of the child that require highly specialized services; or

(4) the testimony by the local social services agency that a diligent search has been conducted that did not locate any available, suitable families for the child that meet the placement preference criteria.

(c) Testimony of the child's bonding or attachment to a foster family alone, without the existence of at least one of the factors in paragraph (b), shall not be considered good cause to keep an Indian child in a lower preference or nonpreference placement.

(d) A party who proposes that the required order of placement preferences not be followed bears the burden of establishing by clear and convincing evidence that good cause exists to modify the order of placement preferences.

(e) If the court finds there is good cause to place outside the order of placement preferences, the court must make written findings.

(f) A good cause finding under this subdivision must consider whether active efforts were provided to extended family members who are considered the primary placement option to assist them in becoming a placement option for the child as required by section 260.762.

(g) When a child is placed outside the order of placement preferences, good cause to continue this placement must be determined at every stage of the proceedings.

History: 1999 c 139 art 1 s 6; 2007 c 147 art 1 s 12,13; 2013 c 65 s 1; 2015 c 78 art 1 s 22-25