

§3945. Court proceedings

1. Determination of Indian child status. In any proceeding that would qualify as an Indian child custody proceeding or emergency proceeding if the child were an Indian child, the District Court or Probate Court shall ask each participant whether the participant knows or has reason to know that the child is an Indian child. The court shall use the procedures in 25 Code of Federal Regulations, Section 23.107 to determine if a child may be an Indian child.

[PL 2023, c. 359, §5 (NEW).]

2. Notice; time for commencement of proceedings; additional time for preparation. In any involuntary Indian child custody proceeding in which the District Court or Probate Court or a party to the proceeding knows or has reason to know that an Indian child is involved, the party seeking the adoptive placement, foster care placement, preadoptive placement or termination of parental rights of or to an Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of their right of intervention.

A. The notice in any involuntary Indian child custody proceeding involving an Indian child must be written in clear and understandable language and must conform with the requirements of 25 Code of Federal Regulations, Section 23.111(d). The District Court and Probate Court may create a form that complies with this paragraph. [PL 2023, c. 359, §5 (NEW).]

B. The notice must be sent by certified mail, return receipt requested. The notice to the Indian child's tribe must be sent by certified mail, return receipt requested, and via e-mail, at the mailing address and e-mail address on file with the United States Department of the Interior, Bureau of Indian Affairs. [PL 2023, c. 359, §5 (NEW).]

C. If the identity or location of the parent or Indian custodian and the Indian tribe cannot be determined, notice under this subsection must be given to the appropriate regional director of the United States Department of the Interior, Bureau of Indian Affairs in like manner. [PL 2023, c. 359, §5 (NEW).]

D. An original or a copy of each notice sent under this subsection must be filed with the court together with any return receipts or other proof of service. [PL 2023, c. 359, §5 (NEW).]

E. The first hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian and Indian tribe or the appropriate regional director of the United States Department of the Interior, Bureau of Indian Affairs. [PL 2023, c. 359, §5 (NEW).]

F. On the request of a parent, Indian custodian or Indian tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing. [PL 2023, c. 359, §5 (NEW).]

[PL 2023, c. 359, §5 (NEW).]

3. Appointment of counsel. Parents and Indian custodians are entitled to legal counsel in any Indian child custody proceeding or emergency proceeding. A parent or Indian custodian may request the court to appoint legal counsel for them. The District Court or Probate Court, upon a finding that the parent or Indian custodian is indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel. The court may, in its discretion, appoint counsel for the Indian child upon a finding that such appointment is in the best interest of the Indian child.

[PL 2023, c. 359, §5 (NEW).]

4. Examination of reports or other documents. Each party to a foster care placement or termination of parental rights proceeding under state law involving an Indian child has 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.

[PL 2023, c. 359, §5 (NEW).]

5. Remedial services, rehabilitative programs and preventive measures. A party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under chapter 1071, Title 18-C, Article 5 or 9 or Title 19-A, section 1658 shall satisfy the court, in accordance with the standard of proof required by the governing statute, 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.

[PL 2023, c. 359, §5 (NEW).]

6. Involuntary foster care placement. Involuntary foster care placement may not be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the Indian child custody proceeding.

[PL 2023, c. 359, §5 (NEW).]

7. Involuntary termination of parental rights. Involuntary termination of parental rights may not be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the Indian child custody proceeding.

[PL 2023, c. 359, §5 (NEW).]

SECTION HISTORY

PL 2023, c. 359, §5 (NEW).

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