

§3944. Jurisdiction over Indian child custody proceedings

1. Exclusive jurisdiction. An Indian tribe has jurisdiction exclusive as to the courts of the State over any Indian child custody proceeding or emergency proceeding held in this State involving an Indian child who resides or is domiciled within the reservation of that Indian tribe, except when the jurisdiction is otherwise vested in this State by federal law. When an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction, notwithstanding the residence or domicile of the child. Except as provided in section 3953, any Indian child custody proceeding or emergency proceeding in District Court or Probate Court that is within the exclusive jurisdiction of an Indian tribe must be dismissed. The court shall expeditiously notify the tribal court of the pending dismissal based on the tribe's exclusive jurisdiction and ensure that the tribal court is sent all information regarding the proceeding, including but not limited to the pleadings and any court record.
[PL 2023, c. 359, §5 (NEW).]

2. Transfer of proceedings; declination by tribal court. In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child who is not domiciled or residing within the reservation of the Indian child's tribe, the District Court or Probate Court shall, upon the petition of the Indian child's parent, Indian custodian or tribe, promptly notify the tribal court of the transfer petition and transfer the proceeding to the jurisdiction of the Indian child's tribe unless any of the following applies:

A. A parent of the Indian child objects to the transfer; [PL 2023, c. 359, §5 (NEW).]

B. The Indian child's tribe does not have a tribal court, or the tribal court of the Indian child's tribe declines jurisdiction; or [PL 2023, c. 359, §5 (NEW).]

C. The court determines that good cause exists to deny the transfer. The party opposing transfer has the burden to show good cause by clear and convincing evidence. The good cause determination must be based on which court is best positioned to adjudicate the proceeding, not on the potential outcome of the proceeding. In determining whether good cause exists, the court may not consider:

(1) Whether the foster care placement or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian or tribe did not receive notice of the child custody proceeding until an advanced stage;

(2) Whether there have been prior proceedings involving the Indian child for which no petition to transfer was filed;

(3) Whether transfer could affect the placement of the Indian child;

(4) The Indian child's cultural connections with the tribe or its reservation; or

(5) Socioeconomic conditions or any negative perception of tribal or United States Department of the Interior, Bureau of Indian Affairs social services or judicial systems. [PL 2023, c. 359, §5 (NEW).]

[PL 2023, c. 359, §5 (NEW).]

3. Intervention. An Indian child's Indian custodian or tribe may intervene in any proceeding for the foster care placement of, or termination of parental rights to, an Indian child at any point in the proceeding.

[PL 2023, c. 359, §5 (NEW).]

4. Full faith and credit. The State shall give full faith and credit to the public acts, records and judicial proceedings of any Indian tribe that are applicable to an Indian child custody proceeding to the same extent that the State gives full faith and credit to the public acts, records and judicial proceedings of any other governmental entity.

[PL 2023, c. 359, §5 (NEW).]

SECTION HISTORY

PL 2023, c. 359, §5 (NEW).

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