

REFERENCE TITLE: Indian child welfare; custody proceedings

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1643

Introduced by
Senator Gonzales

AN ACT

**AMENDING TITLE 8, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; RELATING
TO CHILD CUSTODY.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 8, Arizona Revised Statutes, is amended by adding
3 chapter 7, to read:

4 CHAPTER 7

5 INDIAN CHILD WELFARE

6 ARTICLE 1. CHILD CUSTODY PROCEEDINGS

7 8-931. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ACTIVE EFFORTS" MEANS THE AFFIRMATIVE, ACTIVE, THOROUGH AND
10 TIMELY EFFORTS INTENDED PRIMARILY TO MAINTAIN OR REUNITE AN INDIAN CHILD
11 WITH HIS OR HER FAMILY.

12 2. "ADOPTIVE PLACEMENT" MEANS THE PERMANENT PLACEMENT OF AN INDIAN
13 CHILD FOR ADOPTION, INCLUDING ANY ACTION RESULTING IN A FINAL DECREE OF
14 ADOPTION.

15 3. "CHILD CUSTODY PROCEEDING":

16 (a) INCLUDES A JUDICIAL PROCEEDING THAT COULD RESULT IN THE
17 FOLLOWING:

18 (i) ADOPTIVE PLACEMENT.

19 (ii) FOSTER CARE PLACEMENT.

20 (iii) GUARDIANSHIP.

21 (iv) PREADOPTIVE PLACEMENT.

22 (v) TERMINATION OF PARENTAL RIGHTS.

23 (b) DOES NOT INCLUDE A PLACEMENT BASED ON EITHER OF THE FOLLOWING:

24 (i) AN ACT BY AN INDIAN CHILD THAT, IF COMMITTED BY AN ADULT, WOULD
25 BE DEEMED A CRIME.

26 (ii) AN AWARD OF CUSTODY TO ONE OF THE CHILD'S PARENTS IN A DIVORCE
27 PROCEEDING.

28 4. "EXTENDED FAMILY MEMBER" MEANS A FAMILY MEMBER AS DEFINED BY THE
29 LAW OR CUSTOM OF THE INDIAN CHILD'S TRIBE OR, IN THE ABSENCE OF SUCH A LAW
30 OR CUSTOM, MEANS A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE AND WHO IS
31 THE INDIAN CHILD'S GRANDPARENT, GODPARENT, AUNT, UNCLE, BROTHER, SISTER,
32 BROTHER-IN-LAW, SISTER-IN-LAW, NIECE, NEPHEW, FIRST COUSIN, SECOND COUSIN
33 OR STEPPARENT.

34 5. "FOSTER CARE PLACEMENT" MEANS ANY ACTION THAT REMOVES AN INDIAN
35 CHILD FROM HIS OR HER PARENTS OR INDIAN CUSTODIAN FOR TEMPORARY PLACEMENT
36 IN A FOSTER HOME OR INSTITUTION OR IN THE HOME OF A GUARDIAN OR
37 CONSERVATOR, THAT PREVENTS THE PARENT OR INDIAN CUSTODIAN FROM DEMANDING
38 THE RETURN OF THE CHILD BUT THAT HAS NOT TERMINATED PARENTAL RIGHTS.

39 6. "GUARDIANSHIP" MEANS ANY ACTION THAT RESULTS IN THE SUSPENSION
40 OF PARENTAL RIGHTS AND THAT PREVENTS THE PARENT FROM DEMANDING THE RETURN
41 OF THE CHILD.

42 7. "INDIAN" MEANS A PERSON WHO IS A MEMBER OF AN INDIAN TRIBE OR AN
43 ALASKAN NATIVE WHO IS A MEMBER OF A REGIONAL CORPORATION AS DEFINED IN THE
44 ALASKA NATIVE CLAIMS SETTLEMENT ACT (P.L. 92-203; 85 STAT. 688; 43 UNITED
45 STATES CODE SECTION 1602).

1 8. "INDIAN CHILD" MEANS ANY UNMARRIED PERSON WHO IS UNDER EIGHTEEN
2 YEARS OF AGE AND WHO IS EITHER:

3 (a) A MEMBER OF AN INDIAN TRIBE.

4 (b) ELIGIBLE FOR MEMBERSHIP IN AN INDIAN TRIBE.

5 9. "INDIAN CHILD'S TRIBE" MEANS EITHER:

6 (a) THE INDIAN TRIBE IN WHICH AN INDIAN CHILD IS A MEMBER OR
7 ELIGIBLE FOR MEMBERSHIP.

8 (b) IN THE CASE OF AN INDIAN CHILD WHO IS A MEMBER OF OR ELIGIBLE
9 FOR MEMBERSHIP IN MORE THAN ONE TRIBE, THE INDIAN TRIBE THAT ALL THE
10 INDIAN TRIBES DETERMINED MAY INTERVENE IN THE CHILD CUSTODY PROCEEDING.

11 10. "INDIAN CUSTODIAN" MEANS AN INDIAN PERSON WHO HAS LEGAL CUSTODY
12 OF AN INDIAN CHILD UNDER TRIBAL LAW OR CUSTOM OR STATE LAW OR TO WHOM THE
13 INDIAN CHILD'S PARENT HAS TRANSFERRED TEMPORARY PHYSICAL CARE, CUSTODY AND
14 CONTROL.

15 11. "INDIAN ORGANIZATION" MEANS ANY GROUP, ASSOCIATION,
16 PARTNERSHIP, CORPORATION OR OTHER LEGAL ENTITY THAT IS OWNED OR CONTROLLED
17 BY INDIANS OR A MAJORITY OF WHOSE MEMBERS ARE INDIANS.

18 12. "INDIAN TRIBE":

19 (a) MEANS ANY INDIAN TRIBE, BAND, NATION OR OTHER ORGANIZED GROUP
20 OR COMMUNITY OF INDIANS THAT IS RECOGNIZED AS ELIGIBLE FOR THE SERVICES
21 PROVIDED TO INDIANS BY THE UNITED STATES SECRETARY OF THE INTERIOR BECAUSE
22 OF THEIR STATUS AS INDIANS.

23 (b) INCLUDES ANY ALASKA NATIVE VILLAGE AS DEFINED IN THE ALASKA
24 NATIVE CLAIMS SETTLEMENT ACT (P.L. 92-203; 85 STAT. 688; 43 UNITED STATES
25 CODE SECTION 1602) AND EXERCISING TRIBAL GOVERNMENTAL POWERS.

26 13. "PARENT" MEANS ANY BIOLOGICAL PARENT OR PARENTS OF AN INDIAN
27 CHILD OR ANY INDIAN PERSON WHO HAS LAWFULLY ADOPTED AN INDIAN CHILD,
28 INCLUDING ADOPTIONS UNDER TRIBAL LAW OR CUSTOM.

29 14. "PREADOPTIVE PLACEMENT" MEANS THE TEMPORARY PLACEMENT OF AN
30 INDIAN CHILD IN A FOSTER HOME OR INSTITUTION AFTER THE TERMINATION OF
31 PARENTAL RIGHTS BUT BEFORE OR IN LIEU OF ADOPTIVE PLACEMENT.

32 15. "RESERVATION" MEANS INDIAN COUNTRY AS DEFINED IN 18 UNITED
33 STATES CODE SECTION 1151 AND ANY LANDS THAT ARE EITHER HELD BY THE UNITED
34 STATES IN TRUST FOR THE BENEFIT OF AN INDIAN TRIBE OR INDIVIDUAL OR HELD
35 BY AN INDIAN TRIBE OR INDIVIDUAL SUBJECT TO A RESTRICTION BY THE UNITED
36 STATES AGAINST ALIENATION.

37 16. "SECRETARY" MEANS THE SECRETARY OF THE UNITED STATES DEPARTMENT
38 OF THE INTERIOR.

39 17. "TERMINATION OF PARENTAL RIGHTS" MEANS ANY ACTION THAT RESULTS
40 IN THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP.

41 18. "TRIBAL COURT" MEANS A COURT WITH FEDERALLY RECOGNIZED
42 JURISDICTION OVER CHILD CUSTODY PROCEEDINGS THAT IS EITHER A COURT OF
43 INDIAN OFFENSES, A COURT ESTABLISHED AND OPERATED UNDER THE CODE OR CUSTOM
44 OF AN INDIAN TRIBE OR ANY OTHER ADMINISTRATIVE BODY OF A TRIBE THAT IS
45 VESTED WITH AUTHORITY OVER CHILD CUSTODY PROCEEDINGS.

8-932. Indian child custody proceedings: jurisdiction

A. AN INDIAN TRIBE HAS EXCLUSIVE JURISDICTION OVER ANY CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN CHILD WHO RESIDES OR WHO IS DOMICILED WITHIN THE RESERVATION OF THE TRIBE, EXCEPT IF 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 RETAINS EXCLUSIVE JURISDICTION, NOTWITHSTANDING THE RESIDENCE OR DOMICILE OF THE CHILD.

B. IN A CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN CHILD WHO IS NOT DOMICILED OR RESIDING WITHIN THE RESERVATION OF THE INDIAN CHILD'S TRIBE, THE COURT, IN THE ABSENCE OF GOOD CAUSE TO THE CONTRARY, SHALL TRANSFER THE PROCEEDING TO THE JURISDICTION OF THE TRIBE, UNLESS A PARENT OF THE CHILD OBJECTS, WHEN A PARENT, THE INDIAN CUSTODIAN OF THE CHILD OR THE INDIAN CHILD'S TRIBE PETITIONS THE COURT. A TRANSFER PURSUANT TO THIS SUBSECTION IS SUBJECT TO DECLINATION BY THE TRIBAL COURT OF THE TRIBE.

C. IF THE STATE COURT BELIEVES OR ANY PARTY ASSERTS THAT GOOD CAUSE TO DENY TRANSFER EXISTS, THE REASONS FOR THAT BELIEF OR ASSERTION SHALL BE STATED ORALLY ON THE RECORD OR BE PROVIDED IN A WRITTEN ORDER AND SHALL BE PROVIDED TO THE PARTIES TO THE CHILD CUSTODY PROCEEDING.

D. ANY PARTY TO THE CHILD CUSTODY PROCEEDING SHALL HAVE THE OPPORTUNITY TO PROVIDE THE COURT WITH THE PARTY'S BELIEFS REGARDING WHETHER GOOD CAUSE TO DENY TRANSFER EXISTS. IN DETERMINING WHETHER GOOD CAUSE TO DENY TRANSFER EXISTS, THE COURT MAY NOT CONSIDER:

1. WHETHER THE CHILD CUSTODY PROCEEDING IS AT AN ADVANCED STAGE.
2. WHETHER THERE HAVE BEEN PRIOR PROCEEDINGS INVOLVING THE CHILD FOR WHICH NO PETITION TO TRANSFER WAS FILED.
3. WHETHER TRANSFER COULD AFFECT THE PLACEMENT OF THE CHILD.
4. THE CHILD'S CULTURAL CONNECTIONS WITH THE TRIBE OR ITS RESERVATION.
5. SOCIOECONOMIC CONDITIONS OR ANY NEGATIVE PERCEPTION OF TRIBAL OR BUREAU OF INDIAN AFFAIRS SOCIAL SERVICES OR JUDICIAL SYSTEMS.

E. THE STATE COURT SHALL STATE ITS BASIS FOR DENYING TRANSFER ORALLY ON THE RECORD OR IN A WRITTEN ORDER.

F. IN ANY CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN CHILD, THE INDIAN CUSTODIAN OF THE CHILD AND THE INDIAN CHILD'S TRIBE SHALL BE ALLOWED TO INTERVENE AT ANY POINT IN THE PROCEEDING.

G. THIS STATE SHALL GIVE FULL FAITH AND CREDIT TO THE PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS OF AN INDIAN TRIBE APPLICABLE TO INDIAN CHILD CUSTODY PROCEEDINGS TO THE SAME EXTENT THIS STATE GIVES FULL FAITH AND CREDIT TO THE PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS OF ANY OTHER ENTITY.

8-933. Pending court proceedings

A. IN ANY INVOLUNTARY PROCEEDING IN JUVENILE COURT, IF THE COURT KNOWS OR HAS REASON TO KNOW THAT AN INDIAN CHILD IS INVOLVED, THE PETITIONER SHALL NOTIFY THE PARENT OR INDIAN CUSTODIAN OF THE CHILD AND THE INDIAN CHILD'S TRIBE, BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, OF

1 THE PENDING PROCEEDINGS AND OF THE RIGHT OF INTERVENTION. IF THE IDENTITY
2 OR LOCATION OF THE PARENT OR INDIAN CUSTODIAN OF THE CHILD AND THE INDIAN
3 CHILD'S TRIBE CANNOT BE DETERMINED, THE NOTICE SHALL BE GIVEN TO THE
4 UNITED STATES SECRETARY OF THE INTERIOR BY REGISTERED MAIL, RETURN RECEIPT
5 REQUESTED. A CHILD CUSTODY PROCEEDING MAY NOT BE HELD UNTIL AT LEAST TEN
6 DAYS AFTER THE PARENT OR INDIAN CUSTODIAN OF THE CHILD AND THE INDIAN
7 CHILD'S TRIBE OR THE SECRETARY RECEIVES NOTICE. THE PARENT OR INDIAN
8 CUSTODIAN OF THE CHILD OR THE INDIAN CHILD'S TRIBE SHALL, ON REQUEST, BE
9 GRANTED UP TO TWENTY ADDITIONAL DAYS TO PREPARE FOR THE PROCEEDING.

10 B. IF THE COURT DETERMINES INDIGENCY, THE PARENT OR INDIAN
11 CUSTODIAN OF THE CHILD HAS THE RIGHT TO COURT-APPOINTED COUNSEL IN ANY
12 CHILD CUSTODY PROCEEDING. THE COURT MAY APPOINT COUNSEL FOR THE INDIAN
13 CHILD ON A FINDING THAT APPOINTMENT IS IN THE BEST INTEREST OF THE INDIAN
14 CHILD.

15 C. EACH PARTY TO A CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN
16 CHILD MAY EXAMINE ALL REPORTS OR OTHER DOCUMENTS FILED WITH THE COURT ON
17 WHICH ANY DECISION WITH RESPECT TO THE ACTION MAY BE BASED.

18 D. ANY PARTY WHO SEEKS TO EFFECT A FOSTER CARE PLACEMENT, PERMANENT
19 GUARDIANSHIP OR TERMINATION OF PARENTAL RIGHTS TO AN INDIAN CHILD SHALL
20 SATISFY THE COURT THAT ACTIVE EFFORTS HAVE BEEN MADE TO PROVIDE REMEDIAL
21 SERVICES AND REHABILITATIVE PROGRAMS DESIGNED TO PREVENT THE BREAKUP OF
22 THE INDIAN FAMILY AND THAT THESE EFFORTS HAVE PROVED UNSUCCESSFUL. THE
23 EVIDENCE CONSIDERED SHALL INCLUDE THE TESTIMONY OF A QUALIFIED EXPERT
24 WITNESS.

25 E. A COURT MAY NOT ORDER A FOSTER CARE PLACEMENT IN THE ABSENCE OF
26 A DETERMINATION, SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, THAT THE
27 CONTINUED CUSTODY OF THE INDIAN CHILD BY THE PARENT OR INDIAN CUSTODIAN OF
28 THE CHILD IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO
29 THE INDIAN CHILD. THE EVIDENCE CONSIDERED SHALL INCLUDE THE TESTIMONY OF
30 A QUALIFIED EXPERT WITNESS.

31 F. A COURT MAY NOT ORDER A PERMANENT GUARDIANSHIP OR THE
32 TERMINATION OF PARENTAL RIGHTS IN THE ABSENCE OF A DETERMINATION,
33 SUPPORTED BY EVIDENCE BEYOND A REASONABLE DOUBT, THAT THE CONTINUED
34 CUSTODY OF THE INDIAN CHILD BY THE PARENT OR INDIAN CUSTODIAN OF THE CHILD
35 IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN
36 CHILD. THE EVIDENCE CONSIDERED SHALL INCLUDE THE TESTIMONY OF QUALIFIED
37 EXPERT WITNESSES.

38 8-934. Parental rights; voluntary termination

39 A. IF A PARENT OR INDIAN CUSTODIAN OF THE CHILD VOLUNTARILY
40 CONSENTS TO FOSTER CARE PLACEMENT, PERMANENT GUARDIANSHIP OR TERMINATION
41 OF PARENTAL RIGHTS, THE CONSENT IS NOT VALID UNLESS IT IS EXECUTED IN
42 WRITING AND RECORDED BEFORE A JUDGE OF THE JUVENILE COURT AND ACCOMPANIED
43 BY THE JUVENILE COURT PRESIDING JUDGE'S CERTIFICATE THAT THE TERMS AND
44 CONSEQUENCES OF THE CONSENT WERE FULLY EXPLAINED IN DETAIL AND WERE FULLY
45 UNDERSTOOD BY THE PARENT OR INDIAN CUSTODIAN. THE COURT SHALL ALSO

1 CERTIFY THAT EITHER THE PARENT OR INDIAN CUSTODIAN OF THE CHILD FULLY
2 UNDERSTOOD THE EXPLANATION IN ENGLISH OR THAT IT WAS INTERPRETED INTO A
3 LANGUAGE THAT THE PARENT OR INDIAN CUSTODIAN UNDERSTOOD. ANY CONSENT
4 GIVEN BEFORE OR WITHIN TEN DAYS AFTER BIRTH OF THE INDIAN CHILD IS NOT
5 VALID.

6 B. A PARENT OR INDIAN CUSTODIAN OF THE CHILD MAY WITHDRAW CONSENT
7 TO A FOSTER CARE PLACEMENT OR PERMANENT GUARDIANSHIP AT ANY TIME AND, IF
8 THE CONSENT IS WITHDRAWN, THE CHILD SHALL BE RETURNED TO THE PARENT OR
9 INDIAN CUSTODIAN.

10 C. IN ANY VOLUNTARY PROCEEDING FOR TERMINATION OF PARENTAL RIGHTS
11 TO OR ADOPTIVE PLACEMENT OF AN INDIAN CHILD, THE PARENT MAY WITHDRAW
12 CONSENT FOR ANY REASON AT ANY TIME BEFORE THE ENTRY OF A FINAL DECREE OF
13 TERMINATION OR ADOPTION AND THE CHILD SHALL BE RETURNED TO THE PARENT.

14 D. AFTER THE ENTRY OF A FINAL DECREE OF ADOPTION OF AN INDIAN
15 CHILD, THE PARENT MAY WITHDRAW CONSENT TO THE ADOPTION ON THE GROUNDS THAT
16 CONSENT WAS OBTAINED THROUGH FRAUD OR DURESS AND MAY PETITION THE COURT TO
17 VACATE THE DECREE. IF THE COURT FINDS THAT THE CONSENT WAS OBTAINED
18 THROUGH FRAUD OR DURESS, THE COURT SHALL VACATE THE DECREE AND RETURN THE
19 INDIAN CHILD TO THE PARENT. AN ADOPTION THAT HAS BEEN EFFECTIVE FOR AT
20 LEAST TWO YEARS MAY NOT BE INVALIDATED UNDER THIS SUBSECTION UNLESS
21 OTHERWISE ALLOWED BY STATUTE.

22 8-935. Petition to invalidate action

23 AN INDIAN CHILD WHO IS THE SUBJECT OF ANY CHILD CUSTODY PROCEEDING,
24 ANY PARENT OR INDIAN CUSTODIAN OF THE CHILD FROM WHOSE CUSTODY THE CHILD
25 WAS REMOVED AND THE INDIAN CHILD'S TRIBE MAY PETITION THE JUVENILE COURT
26 TO INVALIDATE THE ACTION ON A SHOWING THAT THE ACTION VIOLATED SECTION
27 8-932, 8-933 OR 8-934.

28 8-936. Placement of Indian children

29 A. IN ANY ADOPTIVE PLACEMENT OF AN INDIAN CHILD, A PREFERENCE SHALL
30 BE GIVEN, IN THE ABSENCE OF GOOD CAUSE TO THE CONTRARY, TO A PLACEMENT
31 WITH A MEMBER OF THE INDIAN CHILD'S EXTENDED FAMILY, OTHER MEMBERS OF THE
32 INDIAN CHILD'S TRIBE OR OTHER INDIAN FAMILIES.

33 B. AN INDIAN CHILD WHO IS ACCEPTED FOR FOSTER CARE, GUARDIANSHIP OR
34 PREADOPTIVE PLACEMENT SHALL BE PLACED IN THE LEAST RESTRICTIVE SETTING
35 THAT MOST APPROXIMATES A FAMILY AND IN WHICH THE INDIAN CHILD'S SPECIAL
36 NEEDS, IF ANY, MAY BE MET. THE INDIAN CHILD SHALL ALSO BE PLACED WITHIN
37 REASONABLE PROXIMITY TO THE INDIAN CHILD'S HOME, TAKING INTO ACCOUNT ANY
38 SPECIAL NEEDS OF THE INDIAN CHILD. IN A FOSTER CARE, GUARDIANSHIP OR
39 PREADOPTIVE PLACEMENT, A PREFERENCE SHALL BE GIVEN, IN THE ABSENCE OF GOOD
40 CAUSE TO THE CONTRARY, TO A PLACEMENT WITH ANY OF THE FOLLOWING:

- 41 1. A MEMBER OF THE INDIAN CHILD'S EXTENDED FAMILY.
- 42 2. A FOSTER HOME LICENSED, APPROVED OR SPECIFIED BY THE INDIAN
43 CHILD'S TRIBE.
- 44 3. AN INDIAN FOSTER HOME LICENSED OR APPROVED BY AN AUTHORIZED
45 NON-INDIAN LICENSING AUTHORITY.

1 4. AN INSTITUTION FOR CHILDREN APPROVED BY AN INDIAN TRIBE OR
2 OPERATED BY AN INDIAN ORGANIZATION THAT HAS A PROGRAM SUITABLE TO MEET THE
3 INDIAN CHILD'S NEEDS.

4 C. IN A PLACEMENT UNDER SUBSECTION A OR B OF THIS SECTION, IF THE
5 INDIAN CHILD'S TRIBE ESTABLISHES A DIFFERENT ORDER OF PREFERENCE BY
6 RESOLUTION, THE AGENCY OR COURT EFFECTING THE PLACEMENT SHALL FOLLOW THAT
7 ORDER AS LONG AS THE PLACEMENT IS THE LEAST RESTRICTIVE SETTING
8 APPROPRIATE TO THE PARTICULAR NEEDS OF THE INDIAN CHILD, AS PROVIDED IN
9 SUBSECTION B OF THIS SECTION. IF APPROPRIATE, THE PREFERENCE OF THE
10 INDIAN CHILD OR PARENT SHALL BE CONSIDERED. IF A CONSENTING PARENT
11 EVIDENCES A DESIRE FOR ANONYMITY, THE COURT OR AGENCY SHALL GIVE WEIGHT TO
12 THIS DESIRE IN APPLYING THE PREFERENCES.

13 D. IN ANY CHILD CUSTODY PROCEEDING, IF ANY PARTY ASSERTS THAT THERE
14 IS GOOD CAUSE TO DEVIATE FROM THE PLACEMENT PREFERENCES, THE REASONS FOR
15 THAT BELIEF MUST BE STATED ORALLY ON THE RECORD OR BE PROVIDED IN WRITING
16 TO THE PARTIES AND THE COURT. THE PARTY SEEKING DEPARTURE FROM THE
17 PLACEMENT PREFERENCES BEARS THE BURDEN OF PROVING BY CLEAR AND CONVINCING
18 EVIDENCE THAT THERE IS GOOD CAUSE TO DEPART FROM THE PLACEMENT
19 PREFERENCES.

20 E. IN DETERMINING WHETHER GOOD CAUSE TO DEPART FROM THE PLACEMENT
21 PREFERENCES EXISTS, THE COURT SHALL ISSUE A SIGNED MINUTE ENTRY OR ORDER
22 AFTER CONSIDERING ONE OR MORE OF THE FOLLOWING:

23 1. THE REQUEST OF ONE OR BOTH OF THE INDIAN CHILD'S PARENTS, IF
24 THEY ATTEST THAT THEY HAVE REVIEWED THE PLACEMENT OPTIONS, IF ANY, THAT
25 COMPLY WITH THE ORDER OF PREFERENCE.

26 2. THE REQUEST OF THE CHILD, IF THE CHILD IS OF SUFFICIENT AGE AND
27 CAPACITY TO UNDERSTAND THE DECISION THAT IS BEING MADE.

28 3. THE PRESENCE OF A SIBLING ATTACHMENT THAT CAN BE MAINTAINED ONLY
29 THROUGH A PARTICULAR PLACEMENT.

30 4. THE EXTRAORDINARY PHYSICAL, MENTAL OR EMOTIONAL NEEDS OF THE
31 INDIAN CHILD, SUCH AS SPECIALIZED TREATMENT SERVICES THAT MAY BE
32 UNAVAILABLE IN THE COMMUNITY WHERE FAMILIES WHO MEET THE PLACEMENT
33 PREFERENCES LIVE.

34 5. THE UNAVAILABILITY OF A SUITABLE PLACEMENT, IF THE COURT
35 DETERMINES THAT A DILIGENT SEARCH WAS CONDUCTED TO FIND SUITABLE
36 PLACEMENTS MEETING THE PREFERENCE CRITERIA, BUT NONE WAS LOCATED. FOR
37 PURPOSES OF THIS ANALYSIS, THE STANDARDS FOR DETERMINING WHETHER A
38 PLACEMENT IS UNAVAILABLE MUST CONFORM TO THE PREVAILING SOCIAL AND
39 CULTURAL STANDARDS OF THE INDIAN COMMUNITY IN WHICH THE INDIAN CHILD'S
40 PARENT OR EXTENDED FAMILY RESIDES OR WITH WHICH THE INDIAN CHILD'S PARENT
41 OR EXTENDED FAMILY MEMBERS MAINTAIN SOCIAL AND CULTURAL TIES.

42 F. A PLACEMENT MAY NOT DEPART FROM THE PREFERENCES BASED ON THE
43 SOCIOECONOMIC STATUS OF ANY PLACEMENT RELATIVE TO ANOTHER PLACEMENT OR
44 SOLELY ON ORDINARY BONDING OR ATTACHMENT THAT FLOWED FROM TIME SPENT IN A
45 NONPREFERRED PLACEMENT.

G. THE STANDARDS TO BE APPLIED IN MEETING THE PREFERENCE REQUIREMENTS OF THIS SECTION SHALL BE THE PREVAILING SOCIAL AND CULTURAL STANDARDS OF THE INDIAN COMMUNITY IN WHICH THE PARENT OR EXTENDED FAMILY RESIDES OR WITH WHICH THE PARENT OR EXTENDED FAMILY MEMBERS MAINTAIN SOCIAL AND CULTURAL TIES.

H. THE DEPARTMENT SHALL MAINTAIN A RECORD OF EACH PLACEMENT PURSUANT TO THIS CHAPTER OF AN INDIAN CHILD THAT EVIDENCES THE EFFORTS TO COMPLY WITH THE ORDER OF PREFERENCE SPECIFIED IN THIS SECTION. THE RECORD SHALL BE MADE AVAILABLE AT ANY TIME ON THE REQUEST OF THE UNITED STATES SECRETARY OF THE INTERIOR OR THE INDIAN CHILD'S TRIBE.

8-937. Return of custody

A. NOTWITHSTANDING ANY OTHER LAW, IF A FINAL DECREE OF ADOPTION OF AN INDIAN CHILD HAS BEEN VACATED OR SET ASIDE OR THE ADOPTIVE PARENTS VOLUNTARILY CONSENT TO THE TERMINATION OF THEIR PARENTAL RIGHTS TO THE INDIAN CHILD, A BIOLOGICAL PARENT OR PRIOR INDIAN CUSTODIAN MAY PETITION FOR RETURN OF CUSTODY, AND THE COURT SHALL GRANT THE PETITION UNLESS THERE IS A SHOWING, IN A PROCEEDING SUBJECT TO SECTION 8-933, THAT THE RETURN OF CUSTODY IS NOT IN THE BEST INTERESTS OF THE INDIAN CHILD.

B. IF AN INDIAN CHILD IS REMOVED FROM A FOSTER HOME OR INSTITUTION FOR THE PURPOSE OF FURTHER FOSTER CARE OR PREADOPTIVE OR ADOPTIVE PLACEMENT, THE PLACEMENT SHALL BE IN ACCORDANCE WITH THIS CHAPTER, EXCEPT IF AN INDIAN CHILD IS BEING RETURNED TO THE PARENT OR INDIAN CUSTODIAN OF THE CHILD FROM WHOSE CUSTODY THE CHILD WAS ORIGINALLY REMOVED.

8-938. Tribal affiliation information

ON APPLICATION BY AN INDIAN INDIVIDUAL WHO IS AT LEAST EIGHTEEN YEARS OF AGE AND WHO WAS THE SUBJECT OF AN ADOPTIVE PLACEMENT, THE COURT THAT ENTERED THE FINAL DECREE SHALL INFORM THE INDIVIDUAL OF THE TRIBAL AFFILIATION, IF ANY, OF THE INDIVIDUAL'S BIOLOGICAL PARENTS AND PROVIDE OTHER INFORMATION AS MAY BE NECESSARY TO PROTECT ANY RIGHTS FLOWING FROM THE INDIVIDUAL'S TRIBAL RELATIONSHIP.

8-939. Improper removal of child from custody; declination of jurisdiction

IF A PETITIONER IN AN INDIAN CHILD CUSTODY PROCEEDING HAS IMPROPERLY REMOVED THE CHILD FROM CUSTODY OF THE PARENT OR INDIAN CUSTODIAN OF THE CHILD OR HAS IMPROPERLY RETAINED CUSTODY AFTER A VISIT OR OTHER TEMPORARY RELINQUISHMENT OF CUSTODY, THE COURT SHALL DECLINE JURISDICTION OVER THE PETITION AND SHALL IMMEDIATELY RETURN THE CHILD TO THE CHILD'S PARENT OR INDIAN CUSTODIAN UNLESS RETURNING THE CHILD TO THE CHILD'S PARENT OR INDIAN CUSTODIAN WOULD SUBJECT THE INDIAN CHILD TO A SUBSTANTIAL AND IMMEDIATE DANGER OR THREAT OF DANGER.

8-940. Emergency removal or placement of child

THIS CHAPTER DOES NOT PREVENT THE EMERGENCY REMOVAL OF AN INDIAN CHILD WHO IS A RESIDENT OF OR WHO IS DOMICILED ON A RESERVATION, BUT TEMPORARILY LOCATED OFF THE RESERVATION, FROM THE CHILD'S PARENT OR INDIAN CUSTODIAN OR THE EMERGENCY PLACEMENT OF THE CHILD IN A FOSTER HOME OR

1 INSTITUTION TO PREVENT IMMINENT PHYSICAL DAMAGE OR HARM TO THE INDIAN
2 CHILD. THE DEPARTMENT OR OTHER AGENCY INVOLVED SHALL ENSURE THAT THE
3 EMERGENCY REMOVAL OR PLACEMENT TERMINATES IMMEDIATELY WHEN THE REMOVAL OR
4 PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT PHYSICAL DAMAGE OR
5 HARM TO THE INDIAN CHILD AND SHALL EXPEDITIOUSLY INITIATE A CHILD CUSTODY
6 PROCEEDING SUBJECT TO THIS CHAPTER, TRANSFER THE INDIAN CHILD TO THE
7 JURISDICTION OF THE APPROPRIATE INDIAN TRIBE OR RESTORE THE INDIAN CHILD
8 TO THE PARENT OR INDIAN CUSTODIAN OF THE CHILD, AS MAY BE APPROPRIATE.