

California Department of Social Services
2018 Proposed Trailer Bill

Title: Federal Compliance: Indian Child Welfare Act Child Custody Proceedings

Section 305.5 of the Welfare and Institutions Code is amended to read:

(a) ~~If an Indian child,~~ If a state or local authority takes an Indian child into temporary custody and the state or local authority knows or has reason to believe the child is an Indian child who is a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings as recognized in Section 1911 of Title 25 of the United States Code or reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, ~~has been removed by a state or local authority from the custody of his or her parents or Indian custodian,~~ the state or local authority shall provide notice of the ~~removal~~ temporary custody to the tribe no later than the next working day ~~following the removal~~ and shall provide all relevant documentation to the tribe regarding the ~~removal~~ temporary custody and the child's identity. If the tribe determines that the child is an Indian child who is already a ward of a tribal court or is subject to the tribe's exclusive jurisdiction, the state or local authority shall transfer the child ~~custody proceeding~~ to the tribe within 24 hours after receipt of written notice from the tribe of that determination.

(b) If the state or local authority is unable to confirm that an Indian child is already a ward of a tribal court or subject to the exclusive jurisdiction, as described in paragraph (a), of an Indian tribe prior to the time required for filing of a petition pursuant to Section 300, the child welfare agency shall file a petition to adjudicate the child a dependent of the state court. The child welfare agency shall inform the state court in its report for the initial petition hearing pursuant to Section 319, that the Indian child may be a ward of a tribal court or subject to the exclusive jurisdiction of the child's tribe. If the child welfare agency receives confirmation that an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction of the Indian child's tribe between the time of filing a petition and the initial petition hearing, the agency shall inform the state court, provide a copy of the written confirmation and move to dismiss the petition.

(c) If the state court receives information from the child welfare agency or any other source that suggests an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction, as described in paragraph (a), of an Indian tribe, the state court must expeditiously notify the tribe and/or the tribal court of the pending dismissal based on the tribe's exclusive jurisdiction. The notice shall advise the tribe that the state court will dismiss the child custody proceeding upon receiving confirmation from the tribe that the child is a ward of a tribal court or subject to the tribe's exclusive jurisdiction. Unless otherwise agreed upon by the state court and the tribe pursuant to Section 1919 of Title 25 of the United States Code, upon receipt of such confirmation, the state court shall dismiss the child custody proceeding and ensure that the tribal court is sent all information regarding the proceeding, including, but not limited to, the pleadings and any state court record.

(b) ~~(d)~~-In the case of an Indian child who is ~~not domiciled or residing within a reservation of an Indian tribe or who resides or is domiciled within a reservation of an Indian tribe that does not have exclusive jurisdiction over child custody proceedings pursuant to Section 1911 or 1918 of Title 25 of the United States Code~~ not a ward of a tribal court or subject to the exclusive jurisdiction, as described in paragraph (a), of an Indian tribe, the state court shall transfer the proceeding to the jurisdiction of the child's tribe upon petition of either parent, the Indian custodian, ~~if any~~, or the child's tribe, unless the state court finds good cause not to transfer. The state court shall ~~dismiss the proceeding or~~ terminate jurisdiction only after receiving proof confirmation that the tribal court has accepted the transfer-~~of jurisdiction~~. At the time that the court ~~dismisses the proceeding or~~ terminates jurisdiction, the state court shall: ~~also make an order transferring the physical custody of the child to the tribal court.~~

(1) Expeditiously provide the tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any state court record; and

(2) Work with the tribal court to ensure that the transfer of the child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

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~~(e)~~(e)(1) If a petition to transfer proceedings as described in subdivision ~~(b)~~(d) is filed, the state court shall find good cause to deny the petition if one or more of the following circumstances are shown to exist:

(A) One or both of the child's parents object to the transfer; or

~~(B) The child's tribe does not have a "tribal court" as defined in Section 1910 of Title 25 of the United States Code.~~

~~(B)~~(C) The tribal court of the child's tribe declines the transfer.

~~(2) Good cause not to transfer the proceeding may exist if:~~ When determining whether good cause exists to deny a transfer, the state court shall not consider:

~~(A) The evidence necessary to decide the case cannot be 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 making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.~~ Socioeconomic conditions and the perceived adequacy of tribal social services or judicial systems;

~~(B) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition within a reasonable time after receiving notice of the proceeding, provided the notice complied with Section 224.2. It shall not, in and of itself, be considered an unreasonable delay for a party to wait until reunification efforts have failed and reunification services have been terminated before filing a petition to transfer.~~ Whether the child custody 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;

~~(C) The Indian child is over 12 years of age and objects to the transfer.~~ Whether there have been prior proceedings involving the child for which no transfer petition was filed;

~~(D) The parents of the child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe. Whether the transfer could affect the placement of the child; or~~

~~(E) Whether the Indian child has cultural connections with the tribe or its reservation.~~

~~(3) Socioeconomic conditions and the perceived adequacy of tribal social services or judicial systems may not be considered in a determination that good cause exists.~~

~~(4)~~ (3) The burden of establishing good cause ~~to the contrary~~ not to transfer shall be on the party opposing the transfer. If the state court believes, or any party asserts, that good cause ~~to the contrary~~ not to transfer exists, the reasons for that belief or assertion shall be stated orally on the record or in writing and made available to all parties who are petitioning for the transfer, and the petitioner shall have the opportunity to provide information or evidence in rebuttal of the belief or assertion.

~~(5)~~ (4) Nothing in this section or Section 1911 or 1918 of Title 25 of the United States Code shall be construed as requiring a tribe to petition the Secretary of the Interior to reassume exclusive jurisdiction pursuant to Section 1918 of Title 25 of the United States Code prior to exercising jurisdiction over a proceeding transferred under subdivision ~~(b)~~(d).

~~(d)~~ (f) An Indian child's domicile or place of residence is determined by that of the parent, guardian, or Indian custodian with whom the child maintained his or her primary place of abode at the time the Indian child custody proceedings were initiated.

~~(e)~~ (g) If any petitioner in an Indian child custody proceeding has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the state court shall decline jurisdiction over the petition and shall immediately return the child to his or her parent or Indian custodian, unless returning the child to the parent or Indian custodian would subject the child to a substantial and immediate danger or threat of danger.

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~~(f)~~(h) Nothing in this section shall be construed to prevent the emergency removal of an Indian child who is a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe **that has exclusive jurisdiction over child custody proceedings**, but is temporarily located off the reservation, from a parent or Indian custodian or the emergency placement of the child in a foster home or institution in order to prevent imminent physical damage or harm to the child. The state or local authority 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 an Indian child custody proceeding, transfer the child to the jurisdiction of the Indian child's tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

~~(g)~~(i) When an Indian child is transferred from a ~~county juvenile state~~ court to an Indian tribe pursuant to subdivision (a), ~~(c)~~, ~~(b)~~(d), or ~~(f)~~(h), the county shall, pursuant to Section 827.15, release the child case file to the tribe having jurisdiction.

Section 827.15 of the Welfare and Institutions Code is amended to read:

827.15.

(a) Notwithstanding Section 827, whenever the juvenile court of a county has made a determination pursuant to subdivision (a), ~~(b)~~(d), or ~~(f)~~(h) of Section 305.5 that a child custody proceeding of an Indian child is to be transferred to the jurisdiction of a tribal court the child case file shall be transferred to the tribe.

(b) If an Indian child is under the jurisdiction of a Title IV-E tribe or a Tribal Title IV-E agency, federal law requires the safeguarding of information as set forth in 45 C.F.R 205.50.

(c) In all other transfers, the juvenile court shall order the release of the child's case file provided that the tribe agrees to maintain the documentation confidential consistent with state and federal law.

(d) As used in this section, a "child case file" means information including the juvenile case file retained by the juvenile court and the child welfare agency files or records retained by the county. For Title IV-E tribes or a Tribal Title IV-E agency that information includes, but need not be limited to, the documentation set forth in 45 C.F.R. 1356.67.

**Section 381 of the Welfare and Institutions Code is amended to read:
381.**

(a) If a transfer is made from a juvenile court of a county to a tribe pursuant to Section 305.5, the case shall be transferred to the tribe after the court has made a determination that the transfer is required pursuant to subdivision (a), ~~(b)(d)~~, or ~~(f)(h)~~ of Section 305.5. The Juvenile court and the tribe shall each document the finding of the facts supporting jurisdiction over the minor.

(b) The juvenile court shall issue an order of transfer of the case that states all of the findings, orders, or modification of orders that have been made in the case, and the name and address of the tribe having jurisdiction. All papers contained in the file shall be transferred to the tribe having jurisdiction. The transferring county shall maintain a copy of the order of transfer and the findings of fact.

(c) If an order of transfer from a county to a tribe is filed with the clerk of a juvenile court, the clerk shall place the transfer order on the calendar of the court, and, notwithstanding Section 378, that matter shall have precedence over all actions and civil proceedings not specifically given precedence by any other law and shall be heard by the court at the earliest possible moment after the order is filed.