

PROBATE CODE OF 1939 (EXCERPT)

Act 288 of 1939

CHAPTER XIIB

712B.1 Chapter; short title.

Sec. 1. This chapter shall be known and may be cited as the "Michigan Indian family preservation act".

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.3 Definitions.

Sec. 3. As used in this chapter:

(a) "Active efforts" means actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the Indian child with the Indian family. Active efforts require more than a referral to a service without actively engaging the Indian child and family. Active efforts include reasonable efforts as required by title IV-E of the social security act, 42 USC 670 to 679c, and also include, but are not limited to, doing or addressing all of the following:

(i) Engaging the Indian child, child's parents, tribe, extended family members, and individual Indian caregivers through the utilization of culturally appropriate services and in collaboration with the parent or child's Indian tribes and Indian social services agencies.

(ii) Identifying appropriate services and helping the parents to overcome barriers to compliance with those services.

(iii) Conducting or causing to be conducted a diligent search for extended family members for placement.

(iv) Requesting representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards and child rearing practice within the tribal community to evaluate the circumstances of the Indian child's family and to assist in developing a case plan that uses the resources of the Indian tribe and Indian community, including traditional and customary support, actions, and services, to address those circumstances.

(v) Completing a comprehensive assessment of the situation of the Indian child's family, including a determination of the likelihood of protecting the Indian child's health, safety, and welfare effectively in the Indian child's home.

(vi) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and actively soliciting the tribe's advice throughout the proceeding.

(vii) Notifying and consulting with extended family members of the Indian child, including extended family members who were identified by the Indian child's tribe or parents, to identify and to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.

(viii) Making arrangements to provide natural and family interaction in the most natural setting that can ensure the Indian child's safety, as appropriate to the goals of the Indian child's permanency plan, including, when requested by the tribe, arrangements for transportation and other assistance to enable family members to participate in that interaction.

(ix) Offering and employing all available family preservation strategies and requesting the involvement of the Indian child's tribe to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child's tribe.

(x) Identifying community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child's family with special needs, and providing information about those resources to the Indian child's family, and actively assisting the Indian child's family or offering active assistance in accessing those resources.

(xi) Monitoring client progress and client participation in services.

(xii) Providing a consideration of alternative ways of addressing the needs of the Indian child's family, if services do not exist or if existing services are not available to the family.

(b) "Child custody proceeding" includes, but is not limited to, 1 or more of the following:

(i) Foster care placement. Any action removing an Indian child from his or her parent or Indian custodian, and where the parent or Indian custodian cannot have the Indian child returned upon demand but parental rights have not been terminated, for temporary placement in, and not limited to, 1 or more of the following:

(A) Foster home or institution.

(B) The home of a guardian or limited guardian under part 2 of article V of the estates and protected individuals code, 1998 PA 386, MCL 700.5201 to 700.5219.

(C) A juvenile guardianship under chapter XIIA.

(ii) Termination of parental rights. Any action resulting in the termination of the parent-child relationship.

(iii) Preadoptive placement. Temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but before or in lieu of adoptive placement.

(iv) Adoptive placement. Permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption.

(v) An Indian child is charged with a status offense in violation of section 2(a)(2) to (4) or (d) of chapter XIIA.

(vi) Child custody proceeding does not include a placement based on an act that, if committed by an adult, would be a crime or based on an award, in a divorce proceeding, of custody to 1 of the parents.

(c) "Court" means the family division of circuit court or the probate court.

(d) "Culturally appropriate services" means services that enhance an Indian child's and family's relationship to, identification, and connection with the Indian child's tribe. Culturally appropriate services should provide the opportunity to practice the teachings, beliefs, customs, and ceremonies of the Indian child's tribe so those may be incorporated into the Indian child's daily life, as well as services that address the issues that have brought the Indian child and family to the attention of the department that are consistent with the tribe's beliefs about child rearing, child development, and family wellness. Culturally appropriate services may involve tribal representatives, extended family members, tribal elders, spiritual and cultural advisors, tribal social services, individual Indian caregivers, medicine men or women, and natural healers. If the Indian child's tribe establishes a different definition of culturally appropriate services, the court shall follow the tribe's definition.

(e) "Department" means the department of health and human services or a successor department or agency.

(f) "Extended family members" means that term as defined by the law or custom of the Indian child's tribe or, in the absence of that law or custom, means a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent and includes the term "relative" as that term is defined in section 13a(j) of chapter XIIA.

(g) "Foster home or institution" means a child caring institution as that term is defined in section 1 of 1973 PA 116, MCL 722.111.

(h) "Guardian" means a person who has qualified as a guardian of a minor under a parental or spousal nomination or a court order issued under section 19a or 19c of chapter XIIA, section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, or sections 600 to 644 of the mental health code, 1974 PA 258, MCL 330.1600 to 330.1644. Guardian may also include a person appointed by a tribal court under tribal code or custom. Guardian does not include a guardian ad litem.

(i) "Guardian ad litem" means an individual whom the court appoints to assist the court in determining the child's best interests. A guardian ad litem does not need to be an attorney.

(j) "Indian" means any member of any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska native village as defined in section 1602(c) of the Alaska native claims settlement act, 43 USC 1602.

(k) "Indian child" means an unmarried person who is under the age of 18 and is either of the following:

(i) A member of an Indian tribe.

(ii) Eligible for membership in an Indian tribe as determined by that Indian tribe.

(l) "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than 1 tribe, the Indian child's tribe is the tribe with which the Indian child has the most significant contacts.

(m) "Indian child welfare act" means the Indian child welfare act of 1978, 25 USC 1901 to 1963.

(n) "Indian custodian" means any Indian person who has custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the Indian child's parent.

(o) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska native village as defined in section 1602(c) of the Alaska native claims settlement act, 43 USC 1602.

(p) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

(q) "Lawyer-guardian ad litem" means an attorney appointed under section 21 of this chapter. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section 17d of chapter XIA. The provisions of section 17d of chapter XIA also apply to a lawyer-guardian ad litem appointed for the purposes of this chapter under each of the following:

(i) Section 5213 or 5219 of the estates and protected individuals code, 1998 PA 386, MCL 700.5213 and 700.5219.

(ii) Section 4 of the child custody act of 1970, 1970 PA 91, MCL 722.24.

(iii) Section 10 of the child protection law, 1975 PA 238, MCL 722.630.

(r) "Official tribal representative" means an individual who is designated by the Indian child's tribe to represent the tribe in a court overseeing a child custody proceeding. An official tribal representative does not need to be an attorney.

(s) "Parent" means any biological parent or parents of an Indian child or any person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. Parent does not include the putative father if paternity has not been acknowledged or established.

(t) "Reservation" means Indian country as defined in 18 USC 1151 and any lands, not covered under that section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(u) "Secretary" means the Secretary of the Interior.

(v) "Tribal court" means a court with jurisdiction over child custody proceedings that is either a court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings.

(w) "Ward of tribal court" means a child over whom an Indian tribe exercises authority by official action in tribal court or by the governing body of the tribe.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013;—Am. 2016, Act 26, Eff. May 30, 2016.

Popular name: Probate Code

712B.5 Best interests of child; duties of courts.

Sec. 5. In Indian child custody proceedings, the best interests of the Indian child shall be determined, in consultation with the Indian child's tribe, in accordance with the Indian child welfare act, and the policy specified in this section. Courts shall do both of the following:

(a) Protect the best interests of Indian children and promote the stability and security of Indian tribes and families.

(b) Ensure that the department uses practices, in accordance with the Indian child welfare act, this chapter, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian children and, when an out-of-home care placement, adoptive placement, or preadoptive placement is necessary, place an Indian child in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.7 Jurisdiction; exclusive; emergency; transfer; good cause determination; right to intervene or participate in proceeding; full faith and credit to public acts, records, and judicial proceedings.

Sec. 7. (1) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe. If a child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction, regardless of the residence or domicile, or subsequent change in his or her residence or domicile.

(2) The state court may exercise limited emergency jurisdiction if an Indian child who resides or is domiciled within the reservation is temporarily off the reservation and the state has removed the Indian child in an emergency situation to prevent imminent physical damage or harm to the Indian child. The court must comply with the emergency removal hearing requirements outlined in Michigan court rules and sections 13a, 14, and 14a of chapter XIA. The emergency jurisdiction terminates when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child.

(3) In any state court child custody proceeding, for an Indian child 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 Indian tribe's jurisdiction, absent objection by either parent, upon the petition of either

parent or the Indian custodian or the Indian child's tribe, provided that the transfer is subject to declination by the tribal court of the Indian tribe.

(4) When a court makes a good cause determination under this section, adequacy of the tribe, tribal court, or tribal social services shall not be considered.

(5) A court may determine that good cause not to transfer a case to tribal court exists only if the person opposing the transfer shows by clear and convincing evidence that either of the following applies:

(a) The Indian tribe does not have a tribal court.

(b) The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to those parties or witnesses that the Indian tribe is unable to mitigate.

(6) In any state court child custody proceeding of an Indian child, the Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the child custody proceeding.

(7) Official tribal representatives have the right to participate in any proceeding that is subject to the Indian child welfare act and this chapter.

(8) This state shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent given to the public acts, records, and judicial proceedings of any other entity.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013;—Am. 2016, Act 26, Eff. May 30, 2016.

Popular name: Probate Code

712B.9 Child custody proceeding; notification to parent, Indian custodian, and tribe; additional preparation days; suspension of proceedings; prejudice by lack of notice; determination as to which tribe child is member; circumstances leading to belief child is an Indian; determining, documenting, and contacting extended family; determination or testimony by authorized person; documentation of efforts.

Sec. 9. (1) In a child custody proceeding, if the court knows or has reason to know that an Indian child is involved, the petitioner shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending child custody proceeding and of the right to intervene. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary in the same manner described in this subsection. The secretary has 15 days after receipt of notice to provide the requisite notice to the parent or Indian custodian and the tribe.

(2) No foster care placement or termination of parental rights proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding. If the petitioner or court later discovers that the child may be an Indian child, all further proceedings shall be suspended until notice is received by the tribe or the secretary as set forth in this subsection. If the court determines after a hearing that the parent or tribe was prejudiced by lack of notice, the prior decisions made by the court shall be vacated and the case shall proceed from the first hearing. The petitioner has the burden of proving lack of prejudice.

(3) The department shall actively seek to determine whether a child at initial contact is an Indian child. If the department is able to make an initial determination as to which Indian tribe or tribes a child brought to its attention may be a member, the department shall exercise due diligence to contact the Indian tribe or tribes in writing so that the tribe may verify membership or eligibility for membership. If the department is unable to make an initial determination as to which tribe or tribes a child may be a member, the department shall, at a minimum, contact in writing the tribe or tribes located in the county where the child is located and the secretary.

(4) Circumstances under which a court, the department, or other party to a child custody proceeding has reason to believe a child involved in a child custody proceeding is an Indian include, but are not limited to, any of the following:

(a) Any party to the case, Indian tribe, Indian organization, or public or private agency informs the court that the child is an Indian child.

(b) Any public or state-licensed agency involved in child protection services or family support has discovered information that suggests that the child is an Indian child.

(c) The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child.

(d) The residence or the domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community.

(e) An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

(5) The department shall exercise due diligence to determine, document, and contact the Indian child's extended family members in accordance with the fostering connections to success and increasing adoptions act of 2008, Public Law 110-351. If applicable, determinations and documentation should be conducted in consultation with the child or parent's tribe.

(6) A written determination or oral testimony by a person authorized by the Indian tribe to speak on its behalf, regarding a child's membership or eligibility for membership in a tribe, is conclusive as to that tribe.

(7) The petitioner shall document all efforts made to determine a child's membership or eligibility for membership in an Indian tribe and shall provide them, upon request, to the court, Indian tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, or Indian custodian.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.11 Examination of reports or documents by parties.

Sec. 11. Each party to a foster care or termination of parental rights proceeding involving an Indian child has a right to examine all reports or other documents filed with the court upon which any decision with respect to that proceeding may be based.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.13 Guardianship; adoptive placement; termination of parental rights; consent.

Sec. 13. (1) If both parents or Indian custodian voluntarily consent to a petition for guardianship under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, or if a parent consents to adoptive placement or the termination of his or her parental rights for the express purpose of adoption by executing a release under sections 28 and 29 of chapter X, or consent under sections 43 and 44 of chapter X, the following requirements must be met:

(a) To be valid, consent under this section must be executed on a form approved by the state court administrative office, in writing, recorded before a judge of a court of competent jurisdiction, and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given before, or within 10 days after, birth of the Indian child is not valid.

(b) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter.

(c) The voluntary custody proceeding shall be conducted in accordance with Michigan supreme court rules and the following statutes:

(i) In a guardianship proceeding under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, section 25 of this chapter also applies.

(ii) In an adoption proceeding, section 27 of this chapter also applies.

(2) Consent described under subsection (1) must contain the following information:

(a) The Indian child's name and date of birth.

(b) The name of the Indian child's tribe and any identifying number or other indication of the child's membership in the tribe, if any.

(c) The name and address of the consenting parent or Indian custodian.

(d) A sworn statement from the translator, if any, attesting to the accuracy of the translation.

(e) The signature of the consenting parent, parents, or Indian custodian recorded before the judge, verifying an oath of understanding of the significance of the voluntary placement and the parent's right to file a written demand to terminate the voluntary placement or consent at any time.

(f) For consent for voluntary placement of the Indian child in foster care, the name and address of the person or entity who will arrange the foster care placement as well as the name and address of the prospective foster care parents if known at the time.

(g) For consent to termination of parental rights or adoption of an Indian child, in addition to the information in subdivisions (a) to (f), the name and address of the person or entity that will arrange the preadoptive or adoptive placement.

(3) If the placement is for purposes of adoption, a consent under subsection (1) of the Indian child's parent must be executed in conjunction with either a consent to adopt, as required by sections 43 and 44 of chapter X, or a release, as required by sections 28 and 29 of chapter X. A parent who executes a consent under this section may withdraw his or her consent at any time before entry of a final order of adoption by filing a

written demand requesting the return of the Indian child. Once a demand is filed with the court, the court shall order the return of the Indian child. Withdrawal of consent under this section constitutes a withdrawal of a release executed under sections 28 and 29 of chapter X or a consent to adopt executed under sections 43 and 44 of chapter X.

(4) A parent or Indian custodian who executes a consent under this section for the purpose of guardianship may withdraw his or her consent at any time by sending written notice to the court substantially in compliance on a form approved by the state court administrative office that the parent or Indian custodian revokes consent and wants his or her Indian child returned.

(5) A release executed under sections 28 and 29 of chapter X during a pendency of a proceeding under section 2(b) of chapter XIIA is subject to section 15 of this chapter. If the release follows the initiation of a proceeding under section 2(b) of chapter XIIA, the court shall make a finding that culturally appropriate services were offered.

(6) A parent who executes a consent to adoption under sections 43 and 44 of chapter X may withdraw that consent at any time before entry of a final order for adoption by filing notification of the withdrawal of consent with the court. In a direct placement, as defined in section 22(o) of chapter X, a consent by a parent or guardian shall be accompanied by a verified statement signed by the parent or guardian that contains all of the following:

(a) That the parent or guardian has received a list of community and federal resource supports and a copy of the written document described in section 6(1)(c) of the foster care and adoption services act, 1994 PA 204, MCL 722.956.

(b) As required by sections 29 and 44 of chapter X, that the parent or guardian has received counseling related to the adoption of his or her Indian child or waives the counseling with the signing of the verified statement.

(c) That the parent or guardian has not received or been promised any money or anything of value for the consent to adoption of the Indian child, except for lawful payments that are itemized on a schedule filed with the consent.

(d) That the validity and finality of the consent are not affected by any collateral or separate agreement between the parent or guardian and the adoptive parent.

(e) That the parent or guardian understands that it serves the welfare of the Indian child for the parent to keep the child placing agency, court, or department informed of any health problems that the parent develops that could affect the Indian child.

(f) That the parent or guardian understands that it serves the welfare of the Indian child for the parent or guardian to keep his or her address current with the child placing agency, court, or department in order to permit a response to any inquiry concerning medical or social history from an adoptive parent of a minor adoptee or from an adoptee who is 18 years or older.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013;—Am. 2016, Act 26, Eff. May 30, 2016.

Popular name: Probate Code

712B.15 Failure of parent to provide consent; requirements; removal of child from parent or Indian custodian; clear and convincing evidence; termination of parental rights; remedial services and rehabilitative programs; determination that continued custody likely to result in serious emotional or physical damage.

Sec. 15. (1) If an Indian child is the subject of a child protective proceeding under section 2(b) of chapter XIIA, including instances in which the parent executed a release under section 28 of chapter X during the pendency of that proceeding, or a guardianship proceeding under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, and if a parent does not provide consent as described in section 13 of this chapter, or a guardianship proceeding under section 19a or 19c of chapter XIIA, the following requirements must be met:

(a) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter.

(b) The proceeding shall be conducted in accordance with Michigan supreme court rules and subsections (2) to (4).

(c) Section 25 of this chapter applies in a guardianship proceeding under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205.

(2) An Indian child may be removed from a parent or Indian custodian, placed into a foster care placement, or, for an Indian child already taken into protective custody, remain removed from a parent or Indian custodian pending further proceedings, only upon clear and convincing evidence that active efforts have been

made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that the active efforts were unsuccessful, and 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 active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. The evidence must include the testimony of at least 1 qualified expert witness, who has knowledge of the child rearing practices of the Indian child's tribe, 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.

(3) A party seeking a termination of parental rights to an Indian child under state law must demonstrate to the court's satisfaction that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the active efforts were unsuccessful.

(4) No termination of parental rights may be ordered in a proceeding described in this section without a determination, supported by evidence beyond a reasonable doubt, including testimony of at least 1 qualified expert witness as described in section 17, 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.

(5) Any Indian child who is the subject of any action for termination of parental rights under state law, any parent or Indian custodian from whose custody the Indian child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate the action upon a showing that the action violated any provision of this section.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013;—Am. 2016, Act 26, Eff. May 30, 2016.

Popular name: Probate Code

712B.17 Qualified expert witness.

Sec. 17. (1) If the testimony of a qualified expert witness is required, the court shall accept either of the following in the following order of preference:

(a) A member of the Indian child's tribe, or witness approved by the Indian child's tribe, who is recognized by the tribal community as knowledgeable in tribal customs and how the tribal customs pertain to family organization and child rearing practices.

(b) A person with knowledge, skill, experience, training, or education and who can speak to the Indian child's tribe and its customs and how the tribal customs pertain to family organization and child rearing practices.

(2) A party to a child custody proceeding may present his or her own qualified expert witness to rebut the testimony of the petitioner's qualified expert witness.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.19 Improper removal of child from custody.

Sec. 19. If a court determines at a hearing that a petitioner in an Indian child custody proceeding has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and immediately return the child to his or her parent or Indian custodian unless returning the child to his or her parent or Indian custodian would subject the child to a substantial and immediate danger or threat of danger.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.21 Appointment of counsel.

Sec. 21. (1) In a case in which the court determines indigency, the parent or Indian custodian has the right to court-appointed counsel in a removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that the appointment is in the best interest of the child. If state law makes no provision for appointment of counsel in those proceedings, the court shall promptly notify the secretary upon appointment of counsel.

(2) If state law does not require the appointment of a lawyer-guardian ad litem for the child, the court may, in its discretion, appoint a lawyer-guardian ad litem for the child upon a finding that the appointment is in the best interest of the child.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.23 Placement; least restrictive setting; order of preference; documentation.

Sec. 23. (1) Except for a placement for guardianship under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, where both parents submit a consent for the guardianship, an Indian child shall be placed in the least restrictive setting that most approximates a family and in which his or her special needs, if any, may be met. The child shall be placed within reasonable proximity to his or her home, taking into account any special needs of the child. Absent good cause to the contrary, the foster care or preadoptive placement of an Indian child must be in the following order of preference:

- (a) A member of the Indian child's extended family.
- (b) A foster home licensed, approved, or specified by the Indian child's tribe.
- (c) An Indian foster home licensed or approved by the department.
- (d) An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

(2) Absent good cause to the contrary, the adoptive placement of an Indian child must be in the following order of preference:

- (a) A member of the child's extended family.
- (b) A member of the Indian child's tribe.
- (c) An Indian family.

(3) The burden of establishing good cause not to follow the order of preference is on the party requesting the deviation.

(4) The court shall not find good cause to deviate from the placement preferences stated in this section without first ensuring that all possible placements required under this section have been thoroughly investigated and eliminated. All efforts made under this section must be provided to the court in writing or stated on the record. The court shall address efforts to place an Indian child in accordance with this section at each hearing until the placement meets the requirements of this section.

(5) The court's determination of good cause to not follow the order of preference shall be based on 1 or more of the following conditions:

- (a) A request was made by a child of sufficient age.
- (b) A child has an extraordinary physical or emotional need as established by testimony of an expert witness.

(6) In the case of a placement under subsection (1) or (2), if the Indian child's tribe establishes a different order of preference, the department or court ordering the placement shall follow the tribe's order of preference.

(7) A record of each placement of an Indian child shall be maintained by the department or court evidencing the efforts to comply with the order of preference specified in this section. The record shall be made available at any time upon the request of the secretary or Indian child's tribe.

(8) The standards to be applied in meeting the placement preferences established in this section shall be the prevailing social and cultural standards of the Indian tribe or tribes in which the parent or extended family resides or maintains social and cultural ties.

(9) Nothing in this chapter or section prevents the emergency removal, protective custody, or subsequent placement of an Indian child who is a resident of or is domiciled on a reservation but is temporarily located off the reservation.

(10) All efforts made to identify, locate, and place a child according to this section shall be documented and, upon request, made available to the court, tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, or Indian custodian.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.25 Involuntary guardianship; investigation; report; notice of pending proceeding; consent; withdrawal; termination of voluntary guardianship; potential applicability of Indian child welfare act.

Sec. 25. (1) If a petition for a guardianship is filed and is determined to be involuntary under section 15 of this chapter and the court knows or has reason to know that the child is an Indian child, the court may order the department or a court employee to conduct an investigation of the proposed guardianship and file a written report of the investigation. In addition to the information required in section 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204, the report must include, but is not limited to, the following information:

- (a) Whether the child is or is not an Indian child.
- (b) The identity and location of the Indian child's parents, if known.
- (c) If the child is an Indian child, the report must also address all of the following:
 - (i) The tribe or tribes of which the Indian child is a member or eligible for membership.
 - (ii) If the Indian child and family need culturally appropriate and other services to preserve the Indian family.
 - (iii) The identity and location of extended family members and if no extended family members can be found, what efforts were made to locate them.
- (2) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter. If the court knows or has reason to know that the proceeding involves an Indian child, the court shall conduct a hearing to determine all of the following:
 - (a) If the tribe has exclusive jurisdiction. If so, the court shall issue an order terminating the guardianship or dismissing the petition.
 - (b) If the current placement with the guardian meets the placement requirements in section 23 of this chapter.
 - (c) If it is in the Indian child's best interest to order the guardianship.
 - (d) If a lawyer-guardian ad litem should be appointed to represent the Indian child.
- (3) If a petition for guardianship is filed and is to be accompanied by a consent to a voluntary placement of an Indian child, the consent must be executed in accordance with section 13 of this chapter. If the Indian child's parents do not execute a consent under section 13 of this chapter, the petition is considered to be for an involuntary guardianship and the requirements of section 15 of this chapter must be met.
- (4) A parent or Indian custodian who executes a consent under this section for the purpose of voluntary guardianship may withdraw his or her consent at any time by sending written notice to the court substantially in compliance on a form approved by the state court administrative office that the parent or Indian custodian revokes consent and wants his or her Indian child returned.
- (5) The voluntary guardianship is terminated when the court receives from a parent or Indian custodian notice to withdraw consent to the guardianship, and the Indian child shall be immediately returned to the parent or Indian custodian.
- (6) If the court discovers a child may be an Indian child after a guardianship is ordered, the court shall provide notice of the guardianship and the potential applicability of this chapter and the Indian child welfare act, in compliance with Michigan court rules, this chapter, and the Indian child welfare act, to the tribe, the parents or Indian custodian, and the current guardian on a form approved by the state court administrative office.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013;—Am. 2016, Act 26, Eff. May 30, 2016.

Popular name: Probate Code

712B.27 Voluntary placement consent; visitation; notice of pending proceeding; providing certain information to Indian individual reaching age of 18; withdrawal of consent by parent; petition for return of custody.

Sec. 27. (1) If a release or consent to adoption under chapter X is executed, consent to voluntary placement of an Indian child must also be executed by both parents of the Indian child in accordance with section 13 of this chapter.

(2) At any time during an adoption proceeding, a court may order visitation between the Indian child and 1 or more members of the Indian child's tribe and extended family members.

(3) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter.

(4) Upon application by an Indian individual who has reached the age of 18 and who was subject to adoptive placement, the court that entered the order of adoption shall inform the individual of his or her tribal affiliation, if known, of the individual's biological parents, and provide any information as necessary to protect any rights from the individual's tribal relationship.

(5) After the entry of a final order of adoption of an Indian child in any state court, the parent may withdraw consent on the grounds that consent was obtained through fraud or duress and may petition the court to vacate the final order of adoption. Upon a finding that the consent was obtained through fraud or duress, the court shall vacate the final order of adoption and return the child to the parent. No adoption that has been effective for at least 2 years may be invalidated under the provisions of this subsection unless otherwise permitted under state law.

(6) Notwithstanding state law to the contrary, whenever a final order 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 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 the provisions of section 1912 of the Indian child welfare act, 25 USC 1912, that the return of custody is not in the best interests of the child.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.29 Child taken into custody under section 14 of chapter XIIA; termination of subsequent placement; condition; initiation of child custody proceeding; duties of court.

Sec. 29. (1) If an Indian child is taken into custody under section 14 of chapter XIIA, the subsequent placement shall terminate immediately when the removal and placement are no longer necessary to prevent imminent physical damage or harm to the child.

(2) If a child is taken into custody under section 14 of chapter XIIA and the child is under the exclusive jurisdiction of an Indian tribe or is domiciled on a reservation but temporarily located off the reservation, the court shall immediately initiate a child custody proceeding and do either of the following:

(a) Transfer the child to the jurisdiction of the appropriate Indian tribe.

(b) Return the child to the parent or Indian custodian.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.31 Agreements.

Sec. 31. (1) The state is authorized to enter into agreements with tribes in this state regarding the care and custody of Indian children, funding of the care and custody of Indian children, and jurisdiction over child custody proceedings, including agreements that may provide for transfer of jurisdiction on a case-by-case basis and agreements that provide for concurrent jurisdiction between the state and Indian tribes.

(2) Unless the agreement provides otherwise, both of the following apply:

(a) The agreements described in subsection (1) may be revoked by either party upon 180 days' written notice to the other party.

(b) Revocation of an agreement does not affect any action or proceeding over which the court already has jurisdiction.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.33 Department review of cases; monitoring; standards and procedures.

Sec. 33. The department, in consultation with Indian tribes in this state, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the Indian child welfare act and this chapter.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.35 Providing secretary and tribal enrollment officer with copy of court decree or order; other information.

Sec. 35. (1) A Michigan court entering a final decree or order in any Indian child adoptive placement shall provide the secretary and the tribal enrollment officer of the appropriate tribe with a copy of the decree or order together with other information as may be necessary to show the following:

(a) The name, date of birth, and tribal affiliation of the child.

(b) The names and addresses of the biological parents, if known.

(c) The names and addresses of the adoptive parents.

(d) The identity of any agency having files or information relating to the adoptive placement.

(2) If court records contain a statement of identifying information of the biological parent or parents that their identity remains confidential, the court shall include the statement of identifying information with the other information sent to the secretary and the tribal enrollment officer of the appropriate Indian tribe described in subsection (1).

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.37 Census.

Sec. 37. The department shall publish annually a census with no individually identifiable information of all

Indian children in the department's care and custody. The census shall include, by county and statewide, information regarding the Indian children on all of the following:

- (a) Legal status.
- (b) Placement information and whether it complies with this chapter.
- (c) Age.
- (d) Sex.
- (e) Tribe in which the child is a member or eligible for membership.
- (f) Accumulated length of time in foster care.
- (g) Other demographic information considered appropriate concerning all Indian children who are the subject of child custody proceedings.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.39 Invalidation of actions; petition.

Sec. 39. Any Indian child who is the subject of an action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody an Indian child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate the action upon a showing that the action violated any provision of sections 7, 9, 11, 13, 15, 21, 23, 25, 27, and 29 of this chapter.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.41 Severability.

Sec. 41. If any provision of this chapter or its application to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this chapter that can be given effect without the invalid provision or application. For this purpose, the provisions of this chapter are severable.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code