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S.P. 804

In Senate, May 18, 2023

An Act to Enact the Maine Indian Child Welfare Act

Reference to the Committee on Judiciary suggested and ordered printed.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BAILEY of York.

Cosponsored by Representative DANA of the Passamaquoddy Tribe and

Senators: BEEBE-CENTER of Knox, BRAKEY of Androscoggin, BRENNER of Cumberland, CARNEY of Cumberland, CHIPMAN of Cumberland, CURRY of Waldo, DAUGHTRY of Cumberland, DUSON of Cumberland, GROHOSKI of Hancock, HICKMAN of Kennebec, President JACKSON of Aroostook, MOORE of Washington, PIERCE of Cumberland, RAFFERTY of York, RENY of Lincoln, ROTUNDO of Androscoggin, VITELLI of Sagadahoc, Representatives: ABDI of Lewiston, ANKELES of Brunswick, ARFORD of Brunswick, BRENNAN of Portland, CLOUTIER of Lewiston, CLUCHEY of Bowdoinham, COLLINGS of Portland, COPELAND of Saco, CRAFTS of Newcastle, CRAVEN of Lewiston, DHALAC of South Portland, DILL of Old Town, DOUDERA of Camden, EATON of Deer Isle, FAULKINGHAM of Winter Harbor, FAY of Raymond, GATTINE of Westbrook, GERE of Kennebunkport, GRAHAM of North Yarmouth, GRAMLICH of Old Orchard Beach, HASENFUS of Readfield, HEPLER of Woolwich, JAUCH of Topsham, KUHN of Falmouth, LANDRY of Farmington, LANIGAN of Sanford, LEE of Auburn, MADIGAN of Waterville, MALON of Biddeford, MASTRACCIO of Sanford, MATLACK of St. George, MEYER of Eliot, MILLETT of Cape Elizabeth, MILLIKEN of Blue Hill, MOONEN of Portland, MORIARTY of Cumberland, MURPHY of Scarborough, O'CONNELL of Brewer, O'NEIL of Saco, OSHER of Orono, PAULHUS of Bath, PERRY of Calais, PLUECKER of Warren, PRINGLE of Windham, RANA of Bangor, RIELLY of Westbrook, ROEDER of Bangor, SACHS of Freeport, SALISBURY of Westbrook, SARGENT of York, SHAGOURY of Hallowell, SHAW of Auburn, SHEEHAN of Biddeford, SKOLD of Portland, STOVER of Boothbay, Speaker TALBOT ROSS of Portland, TERRY of Gorham, WARREN of Scarborough, WHITE of Waterville, WILLIAMS of Bar Harbor, WORTH of Ellsworth, ZAGER of Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA c. 1066** is enacted to read:

3 **CHAPTER 1066**

4 **MAINE INDIAN CHILD WELFARE ACT**

5 **§3941. Short title**

6 This Act may be known and cited as "the Maine Indian Child Welfare Act."

7 **§3942. Declaration of policy**

8 The purpose of the Maine Indian Child Welfare Act is recognition by the State that
9 Indian tribes have a continuing and compelling governmental interest in an Indian child
10 whether or not the child is in the physical or legal custody of an Indian parent, an Indian
11 custodian or an Indian extended family member at the commencement of an Indian child
12 custody proceeding or the Indian child has resided or is domiciled on an Indian reservation.
13 The State is committed to protecting the essential tribal relations and best interests of an
14 Indian child by promoting practices in accordance with all laws designed to prevent the
15 Indian child's voluntary or involuntary out-of-home placement and, whenever such
16 placement is necessary or ordered, by placing the Indian child, whenever possible, in a
17 placement that reflects the unique values of the child's tribal culture and that is best able to
18 assist the child in establishing, developing and maintaining a political, cultural and social
19 relationship with the Indian child's tribe and tribal community. It is the policy of the State
20 to cooperate fully with Indian tribes and tribal members and citizens in this State and
21 elsewhere in order to ensure that the intent and provisions of this Act are enforced.

22 **§3943. Definitions**

23 As used in this Act, unless the context otherwise indicates, the following terms have
24 the following meanings.

25 **1. Active efforts.** "Active efforts" means affirmative, active, thorough and timely
26 efforts tailored to the facts and circumstances of the case and intended primarily to maintain
27 or reunite an Indian child with that child's family. When an agency is involved in the Indian
28 child custody proceeding, active efforts must include assisting the parent or parents or
29 Indian custodian through the steps of a case plan and with accessing or developing the
30 resources necessary to satisfy the case plan. Active efforts may include:

31 A. Conducting a comprehensive assessment of the circumstances of the Indian child's
32 family, with a focus on safe reunification as the most desirable goal;

33 B. Identifying appropriate services and helping the parents to overcome barriers,
34 including actively assisting the parents in obtaining such services;

35 C. Identifying, notifying and inviting representatives of the Indian child's tribe to
36 participate in providing support and services to the Indian child's family and in family
37 team meetings, permanency planning and resolution of placement issues;

38 D. Conducting or causing to be conducted a diligent search for the Indian child's
39 extended family members and contacting and consulting with extended family

1 members to provide family structure and support for the Indian child and the Indian
2 child's parents;

3 E. Offering and implementing all available and culturally appropriate family
4 preservation strategies and facilitating the use of remedial and rehabilitative services
5 provided by the Indian child's tribe;

6 F. Taking steps to keep siblings together whenever possible;

7 G. Supporting regular visits with parents or Indian custodians in the most natural
8 setting possible as well as trial home visits of the Indian child during any period of
9 removal, consistent with the need to ensure the health, safety and welfare of the child;

10 H. Identifying community resources including housing, financial, transportation,
11 mental health, substance abuse and peer support services and actively assisting the
12 Indian child's parents or, when appropriate, the child's family, in utilizing and accessing
13 those resources;

14 I. Monitoring progress and participation in services;

15 J. Considering alternative ways to address the needs of the Indian child's parents and,
16 when appropriate, the family, if the optimum services do not exist or are not available;
17 and

18 K. Providing post-reunification services and monitoring.

19 **2. Adoptive placement.** "Adoptive placement" means the permanent placement of an
20 Indian child for adoption, including any action resulting in a final decree of adoption.

21 **3. Domicile.** "Domicile" means:

22 A. For a parent or Indian custodian, the place at which a person has been physically
23 present and that the person regards as home; a person's true, fixed, principal and
24 permanent home, to which that person intends to return and remain indefinitely even
25 though the person may be currently residing elsewhere; and

26 B. For an Indian child, the domicile of the Indian child's parents or Indian custodian or
27 guardian or, in the case of an Indian child whose parents are not married to each other,
28 the domicile of the Indian child's custodial parent.

29 **4. Emergency proceeding.** "Emergency proceeding" means a court action that
30 involves the emergency removal or emergency placement of an Indian child, including
31 those pursuant to section 4034 or Title 18-C, Article 5.

32 **5. Extended family member.** "Extended family member" means a person who is
33 defined as a member of an Indian child's extended family by the law or custom of the Indian
34 child's tribe or, in the absence of such law or custom, a person who has reached 18 years
35 of age and who is the Indian child's grandparent, aunt or uncle, sibling, sibling-in-law, niece
36 or nephew, first or second cousin or stepparent.

37 **6. Foster care placement.** "Foster care placement" means the removal of an Indian
38 child from the home of the child's parent or Indian custodian for temporary placement in a
39 foster home, qualified residential treatment program, residential care center for Indian
40 children and youth, or shelter care facility, in the home of a relative other than a parent or
41 Indian custodian, or in the home of a guardian or conservator, from which placement the
42 parent or Indian custodian cannot have the child returned upon demand. "Foster care

1 placement" does not include an adoptive placement, a preadoptive placement, an
2 emergency removal or the detention of an Indian child.

3 **7. Indian.** "Indian" means a person who is a member or citizen of an Indian tribe, or
4 who is an Alaska Native and a member of a Regional Corporation as defined in 43 United
5 States Code, Section 1606. Only an Indian tribe may determine its membership or
6 citizenship, including eligibility for membership or citizenship.

7 **8. Indian child.** "Indian child" means an unmarried person who is under 18 years of
8 age and is a member or citizen of an Indian tribe or is eligible for membership in or
9 citizenship of an Indian tribe and is the biological child of a member or citizen of an Indian
10 tribe.

11 **9. Indian child custody proceeding.** "Indian child custody proceeding" means a
12 proceeding, other than an emergency proceeding, that may culminate in any of the
13 following outcomes:

14 A. Adoptive placement;

15 B. Foster care placement;

16 C. Preadoptive placement; or

17 D. Termination of parental rights.

18 An Indian child custody proceeding does not include a proceeding that may culminate in
19 an outcome for which placement is based upon an act by an Indian child that, if committed
20 by an adult, would be considered a crime or a placement upon award of custody to one of
21 the Indian child's parents in a divorce proceeding.

22 **10. Indian child's tribe.** "Indian child's tribe" means the Indian tribe in which an
23 Indian child is a member or citizen, or eligible for membership or citizenship. In cases in
24 which a child meets the definition of "Indian child" through more than one Indian tribe, the
25 Indian tribes must be given an opportunity to agree on which tribe is the Indian tribe for
26 purposes of this Act. If the Indian tribes are not able to come to an agreement, the court
27 shall designate the Indian child's tribe for purposes of this Act based on which Indian tribe
28 has more significant contacts with the Indian child.

29 **11. Indian custodian.** "Indian custodian" means an Indian person who has legal
30 custody of an Indian child under tribal law or custom or under state law or to whom
31 temporary physical care, custody and control has been transferred by the parent of the
32 Indian child.

33 **12. Indian organization.** "Indian organization" means a group, association,
34 partnership, corporation or other legal entity owned or controlled by Indians, or a majority
35 of whose members are Indians.

36 **13. Indian tribe.** "Indian tribe" means an Indian tribe, band, nation or other organized
37 group or community of Indians recognized as eligible for the services provided to Indians
38 by the United States Secretary of the Interior because of their status as Indians, including
39 an Alaska Native village as defined in 43 United States Code, Section 1602(c).

40 **14. Involuntary Indian child custody proceeding.** "Involuntary Indian child custody
41 proceeding" means an Indian child custody proceeding or emergency proceeding in which:

1 A. The parent or Indian custodian does not consent of that parent's or Indian custodian's
2 free will to the foster care placement, preadoptive placement, adoptive placement or
3 termination of parental rights of or to an Indian child; or

4 B. The parent or Indian custodian consents to the foster care placement, preadoptive
5 placement or adoptive placement under threat of removal of the Indian child by a state
6 court or agency.

7 **15. Parent.** "Parent" means a biological parent or parents of an Indian child or an
8 Indian person who has lawfully adopted an Indian child, including adoptions under tribal
9 law or custom. "Parent" does not include an unwed father when paternity has not been
10 acknowledged or established.

11 **16. Preadoptive placement.** "Preadoptive placement" means the temporary
12 placement of an Indian child in a foster home or institution after the termination of parental
13 rights, but before or in lieu of adoptive placement.

14 **17. Qualified expert witness.** "Qualified expert witness" means a person who meets
15 the requirements of section 3954.

16 **18. Reservation.** "Reservation" means Indian country, as defined in 18 United States
17 Code, Section 1151, or any land not covered under that section to which title is either held
18 by the United States in trust for the benefit of an Indian tribe or Indian or held by an Indian
19 tribe or Indian, subject to a restriction by the United States against alienation.

20 **19. Termination of parental rights.** "Termination of parental rights" means an action
21 resulting in the termination of the parent-child relationship.

22 **20. Tribal court.** "Tribal court" means a court of an Indian tribe with jurisdiction
23 over Indian child custody proceedings, including a federal court of Indian offenses, a court
24 established and operated under the code or custom of an Indian tribe or any other
25 administrative body of an Indian tribe that is vested with authority over Indian child custody
26 proceedings.

27 **21. Voluntary proceeding.** "Voluntary proceeding" means an Indian child custody
28 proceeding or emergency proceeding in which a parent or Indian custodian consents, of
29 that person's free will and without the threat of removal by a state agency, to:

30 A. The foster care placement, preadoptive placement or adoptive placement of an
31 Indian child; or

32 B. The termination of parental rights to an Indian child.

33 **§3944. Jurisdiction over Indian child custody proceedings**

34 **1. Exclusive jurisdiction.** An Indian tribe has jurisdiction exclusive as to the courts
35 of the State over any Indian child custody proceeding or emergency proceeding held in this
36 State involving an Indian child who resides or is domiciled within the reservation of that
37 Indian tribe, except when the jurisdiction is otherwise vested in this State by federal law.
38 When an Indian child is a ward of a tribal court, the Indian tribe retains exclusive
39 jurisdiction, notwithstanding the residence or domicile of the child. Except as provided in
40 section 3953, any Indian child custody proceeding or emergency proceeding in District
41 Court or Probate Court that is within the exclusive jurisdiction of an Indian tribe must be
42 dismissed. The court shall expeditiously notify the tribal court of the pending dismissal
43 based on the tribe's exclusive jurisdiction and ensure that the tribal court is sent all

1 information regarding the proceeding, including but not limited to the pleadings and any
2 court record.

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

9 A. A parent of the Indian child objects to the transfer;

10 B. The Indian child's tribe does not have a tribal court, or the tribal court of the Indian
11 child's tribe declines jurisdiction; or

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

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

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

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

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

24 (5) Socioeconomic conditions or any negative perception of tribal or United States
25 Department of the Interior, Bureau of Indian Affairs social services or judicial
26 systems.

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

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

34 **§3945. Court proceedings**

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

40 **2. Notice; time for commencement of proceedings; additional time for**
41 **preparation.** In any involuntary Indian child custody proceeding in which the District
42 Court or Probate Court or a party to the proceeding knows or has reason to know that an

1 Indian child is involved, the party seeking the adoptive placement, foster care placement,
2 preadoptive placement or termination of parental rights of or to an Indian child shall notify
3 the parent or Indian custodian and the Indian child's tribe of the pending proceedings and
4 of their right of intervention.

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

9 B. The notice must be sent by certified mail, return receipt requested. The notice to
10 the Indian child's tribe must be sent by certified mail, return receipt requested, and via
11 e-mail, at the mailing address and e-mail address on file with the United States
12 Department of the Interior, Bureau of Indian Affairs.

13 C. If the identity or location of the parent or Indian custodian and the Indian tribe
14 cannot be determined, notice under this subsection must be given to the United States
15 Secretary of the Interior in like manner, who has 15 days after receipt to provide the
16 requisite notice to the parent or Indian custodian and the Indian tribe.

17 D. An original or a copy of each notice sent under this subsection must be filed with
18 the court together with any return receipts or other proof of service.

19 E. The first hearing in the proceeding may not be held until at least 10 days after receipt
20 of the notice by the parent, Indian custodian and Indian tribe or the United States
21 Secretary of the Interior.

22 F. On the request of a parent, Indian custodian or Indian tribe, the court shall grant a
23 continuance of up to 20 additional days to enable the requester to prepare for the
24 hearing.

25 **3. Appointment of counsel.** Parents and Indian custodians are entitled to legal
26 counsel in any removal, placement or termination proceeding. A parent or Indian custodian
27 may request the court to appoint legal counsel for them. The District Court or Probate
28 Court, upon a finding that the parent or Indian custodian is indigent, shall appoint and pay
29 the reasonable costs and expenses of their legal counsel. The court may, in its discretion,
30 appoint counsel for the Indian child upon a finding that such appointment is in the best
31 interest of the Indian child.

32 **4. Examination of reports or other documents.** Each party to a foster care placement
33 or termination of parental rights proceeding under state law involving an Indian child has
34 the right to examine all reports or other documents filed with the court upon which any
35 decision with respect to the proceeding may be based.

36 **5. Remedial services, rehabilitative programs and preventive measures.** A party
37 seeking to effect a foster care placement of, or termination of parental rights to, an Indian
38 child under chapter 1071 or Title 18-C, Article 5 or 9 shall satisfy the court that active
39 efforts have been made to provide remedial services and rehabilitative programs designed
40 to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

41 **6. Foster care placement.** Foster care placement may not be ordered in the absence
42 of a determination, supported by clear and convincing evidence, including testimony of
43 qualified expert witnesses, that the continued custody of the Indian child by the parent or
44 Indian custodian is likely to result in serious emotional or physical damage to the Indian

1 child. The evidence must show a causal relationship between the particular conditions in
2 the home and the likelihood that continued custody of the Indian child will result in serious
3 emotional or physical damage to the particular Indian child who is the subject of the Indian
4 child custody proceeding.

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

13 **§3946. Parental rights; voluntary termination**

14 **1. Consent; record; certification matters; invalid consents.** When a parent or Indian
15 custodian voluntarily consents to a foster care placement or to termination of parental
16 rights, this consent is not valid unless executed in writing and recorded before a judge of
17 the District Court or Probate Court. The court shall certify in writing that the terms and
18 consequences of the consent were fully explained in detail and were fully understood by
19 the parent or Indian custodian. The court shall also certify that either the parent or Indian
20 custodian fully understood the explanation in English or that it was interpreted into a
21 language that the parent or Indian custodian understood. Consent given prior to, or within
22 10 days after, birth of an Indian child is not valid.

23 **2. Foster care placement; withdrawal of consent; return of custody.** Any parent
24 or Indian custodian may withdraw consent to a voluntary foster care placement under the
25 laws of this State at any time and, upon such withdrawal, the Indian child must be returned
26 to the parent or Indian custodian.

27 **3. Voluntary termination of parental rights or adoptive placement; withdrawal**
28 **of consent; return of custody.** In any voluntary proceeding for termination of parental
29 rights to, or adoptive placement of, an Indian child, the consent of the parent or Indian
30 custodian may be withdrawn for any reason at any time prior to the entry of a final decree
31 of termination or adoption, as the case may be, and the Indian child must be returned to the
32 parent or Indian custodian.

33 **4. Collateral attack; vacation of decree and return of custody; limitations.** After
34 the entry of a final decree of adoption of an Indian child in the District Court or Probate
35 Court in a voluntary proceeding, the parent or Indian custodian may withdraw consent to
36 the adoption upon the grounds that consent was obtained through fraud or duress and may
37 petition the court to vacate the decree. Upon a finding that the consent was obtained
38 through fraud or duress, the court shall vacate the decree and return the Indian child to the
39 parent or Indian custodian. An adoption that has been effective for 2 years or longer may
40 not be invalidated under the provisions of this subsection.

41 **§3947. Petition to court of competent jurisdiction to invalidate action upon showing**
42 **of certain violations**

43 An Indian child who is the subject of an action for foster care placement or termination
44 of parental rights under the laws of this State, a parent or Indian custodian from whose

1 custody the Indian child was removed under the laws of this State and the Indian child's
2 tribe may petition the District Court to invalidate the action upon a showing that the action
3 violated any provision of sections 3944 to 3946.

4 **§3948. Placement of Indian children**

5 **1. Adoptive placements; preferences.** In an adoptive placement of an Indian child
6 under the laws of this State, placement preference must be given, in the absence of good
7 cause to the contrary, in descending order, as listed below:

8 A. An extended family member of the Indian child;

9 B. Another member or citizen of the Indian child's tribe;

10 C. A member or citizen of an Indian tribe in which the Indian child is eligible for
11 membership or citizenship, but that is not the Indian child's tribe;

12 D. Another Indian with whom the Indian child has a relationship; or

13 E. Another Indian from a tribe that is culturally similar to or linguistically connected
14 to the Indian child's tribe.

15 **2. Foster care or preadoptive placements; criteria; preferences.** An Indian child
16 accepted for foster care placement or preadoptive placement must be placed in the least
17 restrictive setting that most approximates a family and in which that Indian child's special
18 needs, if any, may be met. The Indian child must also be placed within reasonable
19 proximity to that Indian child's home, taking into account any special needs of the child.
20 In any foster care placement or preadoptive placement, placement preference must be
21 given, in the absence of good cause to the contrary, in descending order, as listed below:

22 A. An extended family member of the Indian child;

23 B. A foster home licensed, approved or specified by the Indian child's tribe;

24 C. An Indian foster home licensed or approved by an authorized non-Indian licensing
25 authority; or

26 D. An institution for children approved by an Indian tribe or operated by an Indian
27 organization that has a program suitable to meet the Indian child's needs.

28 **3. Good cause to deviate from placement preferences.** The party seeking departure
29 from the placement preferences under this section bears the burden of proving by clear and
30 convincing evidence that there is good cause to depart from the placement preferences. A
31 court's determination of good cause to depart from the placement preferences must be made
32 on the record or in writing and may be based on one or more of the following
33 considerations:

34 A. The request of one or both of the Indian child's parents, if they attest that they have
35 reviewed the placement options, if any, that comply with the order of preference;

36 B. The request of the Indian child, if the Indian child is of sufficient age and capacity
37 to understand the decision that is being made;

38 C. The presence of a sibling attachment that can be maintained only through a
39 particular placement;

1 D. The extraordinary physical, mental or emotional needs of the Indian child, such as
2 specialized treatment services that may be unavailable in the community where
3 families who meet the placement preferences live; or

4 E. The unavailability of a suitable placement after a determination by the court that a
5 diligent search was conducted to find suitable placements meeting the preference
6 criteria, but none has been located. For purposes of a determination under this
7 paragraph, the standards for determining whether a placement is unavailable must
8 conform to the prevailing social and cultural standards of the Indian community in
9 which the Indian child's parent or extended family resides or with which the Indian
10 child's parent or extended family members maintain social and cultural ties.

11 A placement may not depart from the preferences under this section based on the
12 socioeconomic status of any placement relative to another placement. A placement may
13 not depart from the preferences based solely on ordinary bonding or attachment that
14 developed from time spent in a nonpreferred placement that was made in violation of this
15 Act.

16 **4. Tribal resolution for different order of preference; personal preference**
17 **considered; anonymity in application of preferences.** In the case of a placement under
18 subsection 1 or 2, if the Indian child's tribe establishes a different order of preference by
19 resolution, the agency or court effecting the placement shall follow that order as long as
20 the placement is the least restrictive setting appropriate to the particular needs of the Indian
21 child, as provided in subsection 2. When appropriate, the preference of the Indian child or
22 parent must be considered. When a consenting parent evidences a desire for anonymity,
23 the court or agency must give weight to such desire in applying the preferences.

24 **5. Social and cultural standards applicable.** The standards to be applied in meeting
25 the preference requirements of this section must be the prevailing social and cultural
26 standards of the Indian community in which the parent or extended family resides or with
27 which the parent or extended family members maintain social and cultural ties.

28 **6. Record of placement; availability.** A record of each placement under this section
29 of an Indian child must be maintained by the State, including evidence of the efforts made
30 to comply with the order of preference specified in this section. The record must be made
31 available at any time upon the request of the United States Secretary of the Interior or the
32 Indian child's tribe.

33 **§3949. Return of custody**

34 **1. Petition; best interests of Indian child.** Notwithstanding any provision of law to
35 the contrary, whenever a final decree of adoption of an Indian child has been vacated or set
36 aside or the adoptive parents voluntarily consent to the termination of their parental rights
37 to the Indian child, a biological parent or prior Indian custodian may petition for return of
38 custody and the court shall grant the petition unless there is a showing, in a proceeding
39 subject to the provisions of section 3945, that the return of custody is not in the best interests
40 of the Indian child.

41 **2. Removal from foster care placement; procedure.** Whenever an Indian child is
42 removed from a foster care home or institution for the purpose of further foster care
43 placement or preadoptive or adoptive placement, the placement must be in accordance with
44 the provisions of this chapter, except for a case in which an Indian child is being returned

1 to the parent or Indian custodian from whose custody the Indian child was originally
2 removed.

3 **§3950. Disclosure of tribal affiliation information**

4 Upon application by an individual who has reached 18 years of age and who was an
5 Indian child and the subject of an adoptive placement, the District Court or Probate Court
6 that entered the final decree shall inform the individual of the tribal affiliation, if any, of
7 the individual's biological parents and provide any other information necessary to protect
8 any rights of the individual arising from the individual's tribal relationship.

9 **§3951. Improper removal of Indian child from custody; declination of jurisdiction;**
10 **forthwith return of Indian child; danger exception**

11 When a petitioner in an Indian child custody proceeding before a state court has
12 improperly removed the Indian child from custody of the parent or Indian custodian or has
13 improperly retained custody after a visit or other temporary relinquishment of custody, the
14 court shall decline jurisdiction over the petition and shall forthwith return the Indian child
15 to the child's parent or Indian custodian unless returning the Indian child to the child's
16 parent or Indian custodian would subject the Indian child to a substantial and immediate
17 danger or threat of such danger.

18 **§3952. Higher state or federal standard applicable to protect rights of parent or**
19 **Indian custodian of Indian child; interpretive guidance**

20 In any case in which state or federal law applicable to an Indian child custody
21 proceeding under state or federal law provides a higher standard of protection to the rights
22 of the parent or Indian custodian of an Indian child than the rights provided under this
23 chapter, the state or federal court shall apply the higher state or federal standard.

24 To the extent any procedure of an Indian child custody proceeding is not addressed in
25 this Act, 25 Code of Federal Regulations, Part 23 must inform state practice.

26 **§3953. Emergency removal or placement of Indian child; termination; appropriate**
27 **action**

28 This Act does not prevent the emergency removal of an Indian child who is a resident
29 of or is domiciled on a reservation, but temporarily located off the reservation, from their
30 parent or Indian custodian or the emergency placement of an Indian child in a foster home
31 or institution, under the laws of this State, in order to prevent imminent physical damage
32 or harm to the Indian child.

33 **1. Termination.** An emergency removal or placement of an Indian child in an
34 emergency proceeding must terminate immediately when the removal or placement is no
35 longer necessary to prevent imminent physical damage or harm to the Indian child. An
36 emergency removal or placement of an Indian child may be terminated by, but is not
37 necessarily terminated by, one of the following actions:

38 A. Initiation of an Indian child custody proceeding subject to the provisions this Act;

39 B. Transfer of the Indian child to the jurisdiction of the appropriate Indian tribe; or

40 C. Restoration of the Indian child to the parent or Indian custodian.

41 **2. Procedure applicable to emergency proceedings.** In any emergency proceeding
42 in District Court or Probate Court, the court shall:

- 1 A. Make a finding on the record that the emergency removal or placement is necessary
2 to prevent imminent physical damage or harm to the Indian child;
- 3 B. Promptly hold a hearing on whether the emergency removal or placement continues
4 to be necessary whenever new information indicates that the emergency situation has
5 ended;
- 6 C. At any court hearing during the emergency proceeding, determine whether the
7 emergency removal or placement is no longer necessary to prevent imminent physical
8 damage or harm to the Indian child; and
- 9 D. Immediately terminate or ensure that the petitioning party immediately terminates
10 the emergency proceeding once the court or petitioning party possesses sufficient
11 evidence to determine that the emergency removal or placement is no longer necessary
12 to prevent imminent physical damage or harm to the Indian child.

13 **§3954. Qualified expert witness**

14 **1. Identification.** In any proceeding subject to this Act that requires the testimony of
15 a qualified expert witness, the qualified expert witness must be provided by the petitioner
16 and must meet the criteria of subsection 3 or 4. A qualified expert witness may be identified
17 based on information from the Indian child's tribe or with the assistance of the United States
18 Department of the Interior, Bureau of Indian Affairs.

19 **2. Testimony provided.** In any proceeding subject to this Act that requires the
20 testimony of a qualified expert witness, at least one qualified expert witness must testify
21 regarding:

22 A. The prevailing social and cultural standards and child-rearing practices of the Indian
23 child's tribe; and

24 B. Whether the Indian child's continued custody by the Indian child's parent or Indian
25 custodian is likely to result in serious emotional or physical damage to the Indian child.

26 **3. Tribal qualification.** A person is a qualified expert witness under this section if
27 the Indian child's tribe has designated the person as being qualified to testify to the
28 prevailing social and cultural standards of the Indian tribe.

29 **4. Alternative qualification.** If the Indian child's tribe has not designated a qualified
30 expert witness or the designated qualified expert witness is unavailable, the following
31 individuals, in order of priority, may testify as a qualified expert witness:

32 A. A member of the Indian child's tribe who is recognized by the tribal community as
33 knowledgeable in tribal customs as they pertain to family organization and child-
34 rearing practices;

35 B. A member of another Indian tribe who is recognized to be a qualified expert witness
36 by the Indian child's tribe based on the member's knowledge of the delivery of child
37 and family services to Indians and the Indian child's tribe;

38 C. A layperson who is recognized by the Indian child's tribe as having substantial
39 experience in the delivery of child and family services to Indians, and knowledge of
40 prevailing social and cultural standards and child-rearing practices within the Indian
41 child's tribe; or

