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OHIO LEGISLATIVE SERVICE
COMMISSION
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Ohio Administrative Code

Rule 5180:2-53-06 Emergency removal and involuntary custody of Indian children.

Effective: March 15, 2023

(A) A public children services agency (PCSA) can take emergency protective custody of any Indian child pursuant to paragraph (C) of rule 5101:2-39-01 of the Administrative Code regardless of the jurisdictional status of his or her tribe as long as the child is in danger of imminent physical damage or harm.

(B) When emergency removal of a child from his or her own home is necessary, the PCSA shall consider the child's racial or ethnic background to determine whether the child may be an Indian child. In such cases where the circumstances during the removal are not favorable to identify or inquire if a child is an Indian child, upon the agency's initial contact the case worker shall take the required steps to determine the Indian status of eligibility and membership. The agency shall act in accordance with the requirements set forth in paragraph (B) of rule 5101:2-53-03 of the Administrative Code.

(C) Any emergency removal or placement of an Indian child shall terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(D) A petition for a court order authorizing the emergency removal or continued emergency placement should contain a statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:

(1) The name, age, and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) The steps taken to provide notice to the child's parents, custodians, and tribe about the emergency

proceeding;

(4) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the the regional office of the bureau of Indian affairs (BIA) at the following address: "Minneapolis Regional Director, Bureau of Indian Affairs, 5600 American Blvd. W, Ste. 500, Bloomington, MN 55437";

(5) The residence and the domicile of the Indian child;

(6) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska native village, the name of the tribe affiliated with that reservation or village;

(7) The tribal affiliation of the child and of the parents or Indian custodians;

(8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(9) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to contact the tribe and transfer the child to the tribe's jurisdiction; and

(10) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

(E) An emergency proceeding regarding an Indian child should not be continued for more than thirty days unless the court makes the following determinations:

(1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

(3) It has not been possible to initiate a child custody proceeding.

(F) Prior to an involuntary custody court proceeding, the PCSA or private child placing agency (PCPA) shall provide the court with information which either proves or suggests a child is a member of an Indian tribe and is eligible to be within the jurisdiction of a tribal court pursuant to rule 5101:2-53-03 of the Administrative Code.

(G) In any involuntary proceeding where the agency knows or has reason to know that the child subject to the proceeding is an Indian child, the agency shall adhere to the notice requirements outlined in rule 5101:2-53-04 of the Administrative Code. The agency shall file with the court a copy of the notice and any return receipts or other proof of service.

(H) No foster care placement or termination of parental rights proceeding may be held until at least ten days after receipt of the notice by the parent or Indian custodian and by the tribe or the director of the BIA regional office in Minneapolis. The parent, Indian custodian, and tribe each have a right, upon request, to be granted up to twenty additional days from the date upon which notice was received to prepare for participation in the proceeding.

(I) Except as provided in paragraph (A) of this rule, no foster-care or termination of parental rights proceeding may be held until the waiting periods to which the parents or Indian custodians and to which the Indian child's tribe are entitled have expired in accordance with the following:

(1) Ten days after each parent or Indian custodian, or the director of the BIA regional office in Minneapolis where the parent or Indian custodian is unknown, has received notice of that particular child custody proceeding in accordance with rule 5101:2-53-04 of the Administrative Code.

(2) Ten days after the Indian child's tribe, or the director of the BIA regional office in Minneapolis if the Indian child's tribe is unknown, has received notice of that particular child custody proceeding in accordance with rule 5101:2-53-04 of the Administrative Code.

(3) Up to thirty days after the parent or Indian custodian has received notice of that particular child custody proceeding in accordance with rule 5101:2-53-04 of the Administrative Code, if the parent or Indian custodian has requested up to twenty additional days to prepare for the proceeding.

(4) Up to thirty days after the Indian child's tribe has received notice of that particular child custody proceeding in accordance with rule 5101:2-53-04 of the Administrative Code, if the Indian child's tribe has requested up to twenty additional days to prepare for the proceeding.

(5) Additional time beyond the minimum required by this rule may also be available pursuant to extensions granted by the court.

(J) The agency shall notify the tribe's designated agent or tribal court affecting their tribal member even if the tribe has declined to be involved. The tribe retains the right to participate as an interested party or to intervene at any point in the proceeding.

(K) If the agency recommends foster placement, an affidavit shall be submitted to the court containing all of the following information:

(1) A description of active efforts to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to prevent the need for placement, and an explanation of why these services were unsuccessful in maintaining the child in the home.

(2) An explanation of why the child cannot be protected from serious emotional or physical harm if the child remains in the home even if services are provided to the child and family.

(3) An explanation of the diligent efforts made to contact the child's extended family about providing a placement for the child or, if any members are not known, diligent efforts made to contact the child's tribe and other local Indian organizations for assistance in identifying and contacting extended family, other tribal members, or Indian families for placement.

(4) Clear and convincing evidence, including testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the

subject of the child custody proceeding. Without such a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence.

(L) The agency shall submit a report that contains the following information at the review hearing:

(1) A description of active efforts to reunify the family since the last disposition or review hearing and if those efforts were not successful, an explanation regarding why.

(2) That efforts were made by the agency to arrange for the child's visitation with extended family, or with other tribal members, to ensure the child's ongoing participation in his or her culture.

(3) A statement of family changes needed to correct the problems necessitating intervention, with timetables for accomplishing them.

(4) A description of services to be provided to assist the family, specifically identifying those made available with assistance from the tribe or an Indian organization.

(5) A description of services to be provided to ensure the child's ongoing connection to his or her culture while placed outside of his/her family, including attendance at significant cultural events.

(6) A description of actions to be taken by the parents or Indian custodian to correct the identified problems, and of the parents' compliance with the case plan thus far.

(7) A statement that active efforts have been made to provide services to rehabilitate or prevent the breakup of the Indian family and that these efforts were not successful.

(M) If the agency petitions the court for termination of parental rights, the agency shall include the following information in the petition:

(1) Evidence beyond a reasonable doubt, including testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian

is likely to result in serious emotional or physical damage to the child. The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child custody proceeding. Without such a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence.

(2) The description of circumstances supporting the grounds for termination.

(3) A description of the active efforts made to provide remedial services and rehabilitative programs as coordinated efforts to prevent the breakup of the family and why these efforts were unsuccessful.

(4) A description of the active efforts made to assist the Indian parent or custodian with services needed to avoid termination of parental rights and an explanation of why these efforts were unsuccessful.

(5) An explanation of why the child cannot be protected from the identified problems in the home.

(6) A summary of the tribe's position regarding the permanency plan, including any attachments or supporting documents sent by the tribe to the agency.

(7) An explanation of the efforts completed pursuant to rule 5101:2-53-08 of the Administrative Code.

(8) A description of arrangements made by the agency to ensure visitation and all efforts made to maintain the child's cultural connections.

(9) A permanency plan for the child.

(N) Each party to an emergency proceeding or a foster care placement or termination of parental rights proceeding under state law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such

action may be based.

(O) Upon the agency's determination that there are compelling reasons not to pursue termination of parental rights or reunification for children ages sixteen or older, the agency shall petition the court for a planned permanent living arrangement disposition in accordance with rule 5101:2-42-68 of the Administrative Code. The planned permanent living arrangement petition shall include the following:

(1) Documented facts and circumstances refuting the grounds for termination of parental rights. The agency has to show that although the child cannot be returned home, termination of parental rights is not in the child's best interest.

(2) A description of why the planned permanent living arrangement is in the child's best interest.

(3) A description of the active efforts made to provide remedial services and rehabilitative programs as coordinated efforts to prevent the breakup of the family and why these efforts were unsuccessful.

(4) An explanation of the active efforts made to contact the child's tribe, extended family, and other local Indian organizations for assistance in identifying a culturally appropriate placement for the child.

(5) An explanation of why the child cannot be moved to a placement that meets the preferences established in accordance with rule 5101:2-53-08 of the Administrative Code if the child is not placed with the tribal placement preference.

(6) A description of arrangements made by the agency to ensure visitation with extended family, or, if there is no extended family, with other tribal members, to support the child's cultural connections.

(7) A summary of the tribe's position regarding the permanency plan, including any attachments or supporting documents sent by the tribe to the agency.

(8) A plan to ensure the stability of the planned permanent living arrangement.

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(9) Documentation that the requirements in paragraph (D)(3) of rule 5101:2-42-68 of the Administrative Code have been met.

(P) If, in the course of any child custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, the court will expeditiously determine whether there was improper removal. If the court finds that the Indian child was improperly removed, the court will terminate the proceeding and the child shall be returned immediately 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 substantial and immediate danger or threat of such danger.

(Q) Any of the following may petition the court to invalidate an action for foster care placement or termination of parental rights under state law where it is alleged that 25 U.S.C. 1911 (1978), 25 U.S.C. 1912 (1978), or 25 U.S.C. 1913 (1978) has been violated:

(1) An Indian child who is or was the subject of any action for foster care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's tribe.

(R) Upon a showing that an action for foster-care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 25 U.S.C. 1912, or 25 U.S.C. 1913, the court will determine whether it is appropriate to invalidate the action.

(S) To petition for invalidation of an action for foster-care placement or termination of parental rights, there is no requirement that the petitioner's rights under the Indian Child Welfare Act (ICWA) (1978) were violated; rather, a petitioner may challenge the action based on any violations of 25 U.S.C. 1911, 25 U.S.C. 1912, or 25 U.S.C. 1913 during the course of the child custody proceeding.