



Substitute Senate Bill No. 1204

Public Act No. 23-113

AN ACT CONCERNING THE CONNECTICUT INDIAN CHILD WELFARE ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) Sections 1 to 28, inclusive, of this act may be cited as the Connecticut Indian Child Welfare Act.

Sec. 2. (NEW) (*Effective from passage*) As used in this section and sections 3 to 28, inclusive, of this act:

(1) "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. "Adoptive placement" does not include placement based upon an act, which if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to either parent.

(2) "Child custody proceeding" means a proceeding that includes an adoptive placement, foster care placement, preadoptive placement or termination of parental rights. "Child custody proceeding" does not include placement based upon an act, which if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to either parent.

(3) "Foster care placement" means any action removing an Indian

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child from such child's parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated. "Foster care placement" does not include placement based upon an act, which if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to either parent.

(4) "Extended family member" means a person defined by the law or custom of an Indian child's tribe as an extended family member, or, in the absence of such law or custom, shall be a person who has reached the age of eighteen 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.

(5) "Indian" means any person who is (A) a member of a federally recognized Indian tribe, (B) an Alaska Native and a member of a Regional Corporation as defined in 43 USC 1606, or (C) a member of an Indian tribe recognized by the state of Connecticut.

(6) "Indian child" means any unmarried person who is under the age of eighteen and (A) is either a member of a federally recognized Indian tribe or an Indian tribe recognized by the state of Connecticut, or (B) is eligible for membership in such tribe and is the biological child of a member of such tribe.

(7) "Indian child's tribe" means (A) the federally recognized Indian tribe or Indian tribe recognized by the state of Connecticut of which an Indian child is a member or is eligible for membership in, or (B) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts.

(8) "Indian tribe recognized by the state of Connecticut" means the

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(A) Golden Hill Paugussett Tribe, (B) Paucatuck Eastern Pequot Tribe, and (C) Schaghticoke Tribe.

(9) "Indian custodian" means any Indian person (A) who has legal custody of an Indian child under tribal law or custom or under state law, or (B) to whom temporary physical care, custody and control has been transferred by the parent of such child.

(10) "Indian organization" means any group, association, partnership, corporation or other legal entity owned or controlled by Indians, as defined in this section, or a majority of whose members are Indians.

(11) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement. "Preadoptive placement" does not include placement based upon an act, which if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to either parent.

(12) "Secretary" means the Secretary of the Interior of the United States.

(13) "Federally recognized Indian 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 43 USC 1602(c).

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

(15) "Reservation" means Indian country as defined in 18 USC 1151

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and any lands, not covered under such law, title to which is either held by the United States or a state 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.

(16) "Termination of parental rights" means any action resulting in the termination of the parent-child relationship. "Termination of parental rights" does not include placement based upon an act, which if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to either parent.

(17) "Tribal court" means a court with jurisdiction over child custody proceedings and which is either (A) a Court of Indian Offenses, (B) a court established and operated under the code or custom of a federally recognized Indian tribe or an Indian tribe recognized by the state of Connecticut, or (C) any other administrative body of a federally recognized Indian tribe or an Indian tribe recognized by the state of Connecticut which is vested with authority over child custody proceedings.

Sec. 3. (NEW) (*Effective from passage*) An Indian tribe shall have exclusive jurisdiction as to any state court over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the state by existing federal law. Where an Indian child is a ward of a tribal court, the tribal court shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

Sec. 4. (NEW) (*Effective from passage*) (a) In any state court proceeding for the foster care placement of, or termination of parental rights to, 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 such proceeding to the jurisdiction of the Indian child's tribe, absent objection by either parent, upon the petition of either

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

(b) In any such proceeding, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(c) The 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 that such entities give full faith and credit to the public acts, records and judicial proceedings of any other entity.

Sec. 5. (NEW) (*Effective from passage*) (a) In any involuntary proceeding in a state court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given, in like manner, to the Secretary in the case of an Indian child of a federally recognized Indian tribe or the Commissioner of Children and Families in the case of an Indian child of an Indian tribe recognized by the state of Connecticut, who shall have fifteen days after receipt of such notice to provide the requisite notice to the parent or Indian custodian and the tribe.

(b) No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of the notice by the parent or Indian custodian and the tribe, the Secretary or the Commissioner of Children and Families, provided the parent, Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

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Sec. 6. (NEW) (*Effective from passage*) In any child custody proceeding in which the state court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement or termination proceeding. The court may, in its discretion, appoint counsel for the Indian child upon a finding that such appointment is in the best interest of the child.

Sec. 7. (NEW) (*Effective from passage*) A state court shall disclose all reports or other documents filed with the court upon which any decision may be based with respect to a foster care placement or termination of parental rights proceeding under state law involving an Indian child upon request of any party to such proceeding. Records and documents in such proceeding shall be otherwise confidential and nondisclosable to the public except as may otherwise be provided by law.

Sec. 8. (NEW) (*Effective from passage*) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall provide satisfactory evidence to the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

Sec. 9. (NEW) (*Effective from passage*) No foster care placement may be ordered in a foster care placement proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, 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 child.

Sec. 10. (NEW) (*Effective from passage*) No termination of parental rights may be ordered in a termination of parental rights proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses,

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that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

Sec. 11. (NEW) (*Effective from passage*) Where any parent or Indian custodian voluntarily consents to a foster care placement of an Indian child or to termination of parental rights, such consent shall not be valid unless executed in writing and 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 prior to, or within ten days after, birth of the Indian child shall not be valid.

Sec. 12. (NEW) (*Effective from passage*) Any parent or Indian custodian who voluntarily consents to a foster care placement under state law may withdraw such consent at any time and, upon such withdrawal, the Indian child shall be returned to the parent or Indian custodian.

Sec. 13. (NEW) (*Effective from passage*) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

Sec. 14. (NEW) (*Effective from passage*) After the entry of a final decree of adoption of an Indian child in any state court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the

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parent. No adoption that has been effective for at least two years may be invalidated under the provisions of this section unless otherwise permitted under state law.

Sec. 15. (NEW) (*Effective from passage*) Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of state or federal law.

Sec. 16. (NEW) (*Effective from passage*) In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

Sec. 17. (NEW) (*Effective from passage*) Any Indian child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting that most approximates a family and in which such child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to such child's home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

(1) A member of the Indian child's extended family;

(2) A foster home licensed, approved or specified by the Indian child's tribe;

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

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(4) 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.

Sec. 18. (NEW) (*Effective from passage*) In the case of a placement under section 16 or 17 of this act, if the Indian child's tribe establishes a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child. Where appropriate, the preference of the Indian child or parent shall be considered, provided where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

Sec. 19. (NEW) (*Effective from passage*) The standards to be applied in meeting the preference requirements set forth in sections 16 and 17 of this act shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

Sec. 20. (NEW) (*Effective from passage*) A record of each such placement, under state law, of an Indian child shall be maintained by the Commissioner of Children and Families, evidencing the efforts to comply with the order of preference requirements set forth in sections 16 and 17 of this act. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

Sec. 21. (NEW) (*Effective from passage*) Notwithstanding any provision of the general statutes, whenever a final decree of adoption of an Indian child has been vacated or set aside, or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian of the child may petition for return of custody and the court shall grant such petition unless there is

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a showing, in a proceeding subject to the provisions of sections 5 to 10, inclusive, of this act, that such return of custody is not in the best interests of the child.

Sec. 22. (NEW) (*Effective from passage*) Whenever an Indian child is removed from a foster care placement for the purpose of further foster care, preadoptive or adoptive placement, such placement shall be in accordance with the provisions of sections 2 to 28, inclusive, of this act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

Sec. 23. (NEW) (*Effective from passage*) Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement under sections 2 to 28, inclusive, of this act, the court that entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights derived from the individual's tribal relationship.

Sec. 24. (NEW) (*Effective from passage*) Notwithstanding section 3-6c of the general statutes, the state Department of Children and Families is authorized to enter into an agreement with a federally recognized Indian tribe or an Indian tribe recognized by the state of Connecticut located within the geographic boundaries of the state respecting the care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction, providing services to Indian families, and agreements providing for concurrent jurisdiction between the state and such tribe. Such agreements shall contain a provision allowing either party to revoke such agreement upon written notice of one hundred eighty days to the other party, and such agreement shall address the impact of such revocation on a proceeding over which a court had assumed jurisdiction at the time of revocation.

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Sec. 25. (NEW) (*Effective from passage*) Where any petitioner in an Indian child custody proceeding before a state court 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 such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

Sec. 26. (NEW) (*Effective from passage*) Nothing in the provisions of sections 2 to 28, inclusive, of this act shall be construed to prevent (1) the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from such Indian child's parent or Indian custodian, or (2) the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. The Commissioner of Children and Families shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of sections 2 to 28, inclusive, of this act, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Sec. 27. (NEW) (*Effective from passage*) In any case where federal law applicable to a child custody proceeding under the provisions of sections 2 to 28, inclusive, of this act provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under said sections, the state court shall apply the more protective federal standard.

Sec. 28. (NEW) (*Effective from passage*) Any state court entering a final

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decree or order in any Indian child adoptive placement after the effective date of this section shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show (1) the name and tribal affiliation of the child, (2) the names and addresses of the biological parents, (3) the names and addresses of the adoptive parents, and (4) the identity of any agency having files or information relating to such adoptive placement. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information, and shall request that the Secretary maintain the confidentiality of such information and that such information not be subject to the Freedom of Information Act, 5 USC 552, as amended from time to time, in accordance with 25 USC 1951(a). Such information concerning identity of a parent requesting confidentiality shall also be exempt from disclosure under sections 1-200 to 1-242, inclusive, of the general statutes except as otherwise provided by law.

Sec. 29. (NEW) (*Effective from passage*) If any provision of sections 1 to 28, inclusive, of this act or their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of said sections which can be given effect without the invalid provision or application.

Sec. 30. Section 17a-6g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) As used in this section, [(1) "Indian child" has the same meaning as provided in 25 USC 1903, as amended from time to time, and (2) "Indian Child Welfare Act", 25 USC 1901 et seq., as amended from time to time, means the federal law setting minimum standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes] "Indian child" has the same meaning as provided in section 2 of this act.

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(b) In any action or proceeding under this chapter or chapter 319a involving an Indian child's custody, [placement in a foster or adoptive home] including foster care placement, preadoptive placement, adoptive placement or termination of the parental rights of the parents of such child, the Commissioner of Children and Families shall ensure that such action or proceeding is conducted in accordance with [the Indian Child Welfare Act] sections 1 to 28, inclusive, of this act.

Sec. 31. Section 45a-706a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) As used in this section, (1) "Indian child" has the same meaning as provided in [25 USC 1903, as amended from time to time, and (2) "Indian Child Welfare Act", 25 USC 1901 et seq., as amended from time to time, means the federal law setting minimum standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes] section 2 of this act.

(b) In any action or proceeding under this chapter involving an Indian child's custody, [placement in an adoptive home] including preadoptive placement, adoptive placement or termination of the parental rights of the parents of such child, the Probate Court, or the Superior Court in cases transferred pursuant to section 45a-715, shall ensure that such action or proceeding is conducted in accordance with [the Indian Child Welfare Act] sections 1 to 28, inclusive, of this act.

Sec. 32. Section 46b-115c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

A child custody proceeding that pertains to an Indian child as defined in [the Indian Child Welfare Act, 25 USC Section 1901 et seq.,] section 2 of this act is not subject to this chapter to the extent that it is governed by [the Indian Child Welfare Act] sections 1 to 28, inclusive, of this act.