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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO DOMESTIC RELATIONS -- THE RHODE ISLAND INDIAN CHILD
WELFARE ACT

Introduced By: Representatives Spears, Cotter, Kislak, Craven, Shanley, Batista, Vella-
Wilkinson, Kazarian, Azzinaro, and McEntee

Date Introduced: February 23, 2024

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative finding and declaration of policy.

2 1. Finding. The Legislature finds and declares that membership, citizenship, or nationality
3 in an Indian tribe, as well as eligibility for membership, citizenship, or nationality in an Indian tribe,
4 as determined by each Indian tribe, is a political classification.

5 2. Declaration of policy. The purpose of the Rhode Island Indian Child Welfare Act is for
6 the State to acknowledge that Indian tribes have a continuing and compelling governmental interest
7 in an Indian child whether or not the Indian child is in the physical or legal custody of an Indian
8 parent, Indian family, or an Indian custodian at the commencement of an Indian child custody
9 proceeding and whether or not the Indian child resides or is domiciled on an Indian reservation.
10 Whenever such placement is necessary or ordered, the State shall protect the essential tribal
11 relations and best interests of every Indian child by promoting practices in accordance with all laws
12 applicable to preventing the voluntary or involuntary out-of-home placement of Indian children.
13 The State shall also place every Indian child, whenever possible, in a placement that reflects the
14 unique values of the Indian child's tribal culture and that best assists the Indian child in establishing,
15 developing and maintaining a political, cultural, and social relationship with the Indian child's
16 Indian tribe and tribal community. To ensure that the intent and provisions of this Chapter are
17 enforced, the State shall cooperate fully with the Indian tribes and Indians inhabiting the State and
18 elsewhere.

1 SECTION 2. Title 15 of the General Laws entitled "Domestic Relations" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 15-31

4 THE RHODE ISLAND INDIAN CHILD WELFARE ACT

5 **15-31-1. Short title.**

6 This chapter may be known and cited as "The Rhode Island Indian Child Welfare Act."

7 **15-31-2. Definitions.**

8 As used in this chapter, unless the context otherwise indicates, the following terms have
9 the following meanings:

10 (1) "Active efforts" means active, affirmative, appropriate, beneficial, necessary, thorough,
11 and timely efforts tailored to the facts and circumstances of every individual case and with intent
12 to maintain or reunite an Indian child with that Indian child's family. When the state is involved in
13 any Indian child custody proceeding, active efforts shall include assisting the Indian family, Indian
14 parent, or Indian custodian through the steps of a case plan and assisting the Indian family, Indian
15 parent, or Indian custodian with accessing and developing the resources necessary to satisfy the
16 case plan. To the maximum extent possible, active efforts shall be provided consistent with the
17 prevailing social and cultural conditions and way of life of the Indian child's Indian tribe and in
18 partnership with the Indian child and the Indian child's family or Indian parents and with the Indian
19 child's extended family members, Indian custodians and Indian tribe. When applicable, active
20 efforts shall include, but are not limited to:

21 (i) Conducting a comprehensive assessment of the circumstances of the Indian child's
22 Indian family or Indian parent, with the intent and goal of safely reunifying the Indian child with
23 the Indian family or Indian parent;

24 (ii) Identifying appropriate services and helping the Indian family or Indian parent to
25 overcome barriers, including actively assisting the Indian family or Indian parent in obtaining such
26 services;

27 (iii) Identifying, notifying and inviting representatives of the Indian child's Indian tribe to
28 participate in providing support and services to the Indian child's Indian family, Indian parent, or
29 Indian custodian and in family team meetings, permanency planning, and resolution of placement
30 issues;

31 (iv) Conducting or causing to be conducted a diligent search for extended family members
32 and contacting and consulting with the extended family members to provide family structure and
33 support for the Indian child and the Indian child's Indian family or Indian parent;

34 (v) Offering and implementing all available and culturally appropriate family preservation

1 strategies and facilitating the use of remedial and rehabilitative services as provided or determined
2 by the Indian child's Indian tribe;

3 (vi) Taking all steps to keep siblings together whenever possible;
4 (vii) Supporting regular visits with the Indian family, Indian parent, or Indian custodian
5 and extended family members. Visits shall occur in the most natural setting possible and shall
6 ensure the health, safety and welfare of the Indian child.

7 (viii) Supporting trial home visits of the Indian child during any period of removal.
8 (ix) Identifying and providing active assistance to the Indian child's Indian family, Indian
9 parent, or Indian custodian and extended family to access community resources for, but not limited
10 to, housing, finance, transportation, mental health, substance abuse and peer support services;

11 (x) Monitoring progress and participation in services;
12 (xi) If the optimum services do not exist or are not available, identifying and facilitating
13 access to alternative ways to address the needs of the Indian child's Indian family, Indian parent, or
14 Indian custodian; and

15 (xii) Providing post-reunification services and monitoring.

16 (2) "Adoptive placement" means the permanent placement of an Indian child for adoption,
17 including any action resulting in a final decree of adoption.

18 (3) "Calendar days" means consecutive calendar days.

19 (4) "Domicile" means:

20 (i) For the Indian family, an Indian parent, or an Indian custodian, the place at which a
21 person has been physically present and regards as home; the true, fixed, principal and permanent
22 home, to which the Indian family, the Indian parent, or the Indian custodian intends to return and
23 remain indefinitely even though the Indian family, the Indian parent, or the Indian custodian may
24 be currently residing elsewhere; and

25 (ii) For an Indian child, the domicile of the Indian child's Indian family, Indian parent,
26 Indian custodian or guardian.

27 (5) "Emergency proceeding" means a court action that involves the emergency removal or
28 emergency placement of an Indian child. "Emergency proceeding" does not include a court action
29 involving an emergency award of custody of the Indian child to one of the parents including, but
30 not limited to, an emergency custody order or a protection from abuse proceeding.

31 (6) "Extended family member" means a person who is defined as a member of an Indian
32 child's extended family by the law or custom of the Indian child's Indian tribe or, in the absence of
33 applicable law or custom, a person who is at least eighteen (18) years of age and who is the Indian
34 child's grandparent, aunt, uncle, sibling, sibling-in-law, niece, nephew, first cousin, second cousin,

1 or stepparent.

2 (7) "Family court" means the Rhode Island family court.

3 (8) "Foster care placement" means the removal of an Indian child from the home of the
4 Indian child's Indian family, Indian parent or Indian custodian for temporary placement in:

5 (i) A foster home;

6 (ii) A qualified residential treatment program;

7 (iii) A residential care center for Indian children and youth;

8 (iv) A shelter care facility;

9 (v) The home of a relative other than an Indian parent or Indian custodian; or

10 (vi) In the home of a guardian, from which placement, the Indian family, Indian parent or
11 Indian custodian cannot have the child returned upon demand. "Foster care placement" does not
12 include an adoptive placement, a preadoptive placement, an emergency removal or the detention
13 of an Indian child.

14 (9) "Guardian" means a person who is not an Indian and who has legal custody of an Indian
15 child under state law or to whom temporary physical care, custody and control has been transferred
16 by the parent of the Indian child.

17 (10) "Indian" means an individual who:

18 (i) Is a member, citizen, or national of an Indian tribe;

19 (ii) Is eligible to be a member, citizen, or national of an Indian tribe; or

20 (iii) Is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C.
21 § 1606.

22 Only an Indian tribe may determine its membership, citizenship, or nationality including
23 eligibility for membership, citizenship, or nationality.

24 (11) "Indian child" means an unmarried person who is under eighteen (18) years of age
25 and:

26 (i) Is a member, citizen, or national of an Indian tribe; or

27 (ii) Is eligible for membership in, citizenship in, or nationality in an Indian tribe and is the
28 biological child of an Indian.

29 (12) "Indian child custody proceeding" means a proceeding, other than an emergency
30 proceeding, that may culminate in any of the following outcomes for or related to an Indian child:

31 (i) Adoptive placement;

32 (ii) Foster care placement;

33 (iii) Preadoptive placement; or

34 (iv) Termination of parental rights.

1 An Indian child custody proceeding does not include a proceeding in tribal court or a
2 proceeding that may culminate in an outcome for which placement is based upon an adjudication
3 of delinquency by an Indian child that, if committed by an adult, would be considered a crime or a
4 proceeding involving an award of custody to one of the Indian child's parents, including, but not
5 limited to, a divorce proceeding, a judicial separation proceeding, a protection from abuse
6 proceeding or other domestic relations proceeding.

7 (13) "Indian custodian" means an Indian who has legal custody of an Indian child under
8 tribal law or custom, under state law, or to whom temporary physical care, custody and control has
9 been transferred by a parent of the Indian child. Indian custodian also means an Indian who has
10 lawfully adopted an Indian child, including adoptions under tribal law or custom.

11 (14) "Indian family" means an Indian child's biological mother and biological father
12 collectively.

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

15 (16) "Indian parent" means an Indian who is the biological mother or biological father of
16 an Indian child but who is not married to the Indian child's other biological Indian parent.

17 (17) "Indian tribe" means an Indian tribe, band, nation or other organized group or
18 community of Indians that is:

19 (i) Acknowledged in state law;

20 (ii) Recognized as eligible for the services provided to Indians by state law or policy; or

21 (iii) Recognized as eligible for the services provided to Indians by federal law or policy;

22 and in which the Indian child is an Indian. In cases in which a child meets the definition of "Indian
23 child" through more than one Indian tribe, the Indian tribes shall determine which Indian tribe is
24 the Indian child's Indian tribe for purposes of this chapter. If the Indian tribes cannot agree on the
25 determination, the court shall designate the Indian child's tribe for purposes of this chapter based
26 on which Indian tribe the Indian child has more significant contacts with.

27 (18) "Involuntary Indian child custody proceeding" means an Indian child custody
28 proceeding or emergency proceeding in which:

29 (i) An Indian family, Indian parent or Indian custodian does not consent to the foster care
30 placement, preadoptive placement, adoptive placement or termination of parental rights of or to an
31 Indian child; or

32 (ii) An Indian family, Indian parent or Indian custodian consents to the foster care
33 placement, preadoptive placement or adoptive placement under threat of removal of the Indian
34 child by a state court or agency.

1 (19) "Parent" means an individual who is not an Indian but who is the biological mother or
2 the biological father of an Indian child.

3 (20) "Preadoptive placement" means the temporary placement of an Indian child in a foster
4 home or institution after the termination of parental rights, but before or in lieu of adoptive
5 placement.

6 (21) "Qualified expert witness" means a person who meets the requirements of § 15-31-
7 14.

8 (22) "Reservation" means:

9 (i) Indian country, as defined in 18 U.S.C. § 1151;

10 (ii) Any land not covered under 18 U.S.C. § 1151 to which title is either held by the United
11 States in trust for the benefit of an Indian tribe or Indians; or

12 (iii) Any land otherwise held by an Indian tribe or an Indian.

13 (23) "State" means the State of Rhode Island and its agents, agencies, assignees,
14 departments, employees, or representatives.

15 (24) "Termination of parental rights" means an action resulting in the termination of the
16 parent-child relationship.

17 (25) "Tribal court" means a court of an Indian tribe possessing jurisdiction over Indian
18 child custody proceedings, including:

19 (i) A federal court of Indian offenses;

20 (ii) A court established and operated under the code or custom of an Indian tribe; or

21 (iii) Any other administrative body of an Indian tribe that is vested with authority over
22 Indian child custody proceedings.

23 (26) "Voluntary proceeding" means an Indian child custody proceeding or an emergency
24 proceeding in which an Indian family, an Indian parent or an Indian custodian consents, by free
25 will and without the threat of removal by a state agency, to:

26 (i) The foster care placement, proadaptive placement or adoptive placement of an Indian
27 child; or

28 (ii) The termination of parental rights to an Indian child.

29 **15-31-4. Jurisdiction over Indian child custody proceedings.**

30 (a) Exclusive jurisdiction. An Indian tribe has exclusive jurisdiction over any Indian child
31 custody proceeding or emergency proceeding held in this state involving an Indian child who
32 resides or is domiciled within the reservation of that Indian tribe, except when the jurisdiction is
33 otherwise vested in the state courts by federal law. When an Indian child is a ward of a tribal court,
34 the Indian tribe retains exclusive jurisdiction, regardless of the residence or domicile of the child.

1 Except as provided in §15-31-13, any Indian child custody proceeding or emergency proceeding in
2 family court that is within the exclusive jurisdiction of an Indian tribe shall be dismissed. The
3 family court shall expeditiously notify the tribal court of the pending dismissal based on the tribe's
4 exclusive jurisdiction and ensure that the tribal court receives all information regarding the
5 proceeding including, but not limited to, the pleadings and any court record.

6 (b) Transfer of proceedings; declination by tribal court. In any proceeding for the foster
7 care placement of, or termination of parental rights to, an Indian child who is not domiciled or
8 residing within the reservation of the Indian child's Indian tribe, the family court shall, upon the
9 petition of the Indian child's Indian family, Indian parent, Indian custodian or Indian tribe, promptly
10 notify the tribal court of the transfer petition and transfer the proceeding to the jurisdiction of the
11 Indian child's Indian tribe, except when:

12 (1) An Indian parent of the Indian child objects to the transfer;

13 (2) The Indian child's Indian tribe does not have a tribal court, or the tribal court of the
14 Indian child's Indian tribe declines jurisdiction; or

15 (3) The family court determines that good cause exists to deny the transfer. The party
16 opposing transfer has the burden to show good cause by clear and convincing evidence. The good
17 cause determination shall be based on which court is best positioned to adjudicate the proceeding,
18 and not on the potential outcome of the proceeding. In determining whether good cause exists, the
19 court may not consider:

20 (i) Whether the foster care placement or termination of parental rights proceeding is at an
21 advanced stage if the Indian child's Indian family, Indian parent, Indian custodian or Indian tribe
22 did not receive notice of the child custody proceeding until the advanced stage;

23 (ii) Whether there have been prior proceedings involving the Indian child for which no
24 petition to transfer was filed;

25 (iii) Whether transfer could affect the placement of the Indian child;

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

27 (v) Any socioeconomic conditions or any negative perception of tribal social services or
28 judicial systems or of the United States Department of the Interior, Bureau of Indian Affairs social
29 services or judicial systems.

30 (c) Intervention. An Indian child's Indian custodian or Indian tribe may intervene in any
31 proceeding for the foster care placement of, or termination of parental rights to, an Indian child at
32 any point in the proceeding.

33 (d) Full faith and credit. The state shall give full faith and credit to the public acts, records
34 and judicial proceedings of any Indian tribe or tribal court that are applicable to an Indian child

1 custody proceeding to the same extent that the state gives full faith and credit to the public acts,
2 records and judicial proceedings of any other governmental entity.

3 **15-31-5. Court proceedings.**

4 (a) Determination of Indian child status. In any proceeding that would qualify as an Indian
5 child custody proceeding or emergency proceeding if the child were an Indian child, the family
6 court shall ask each participant whether the participant knows or has reason to know that the child
7 is an Indian child. The family court may use the procedures in 25 C.F.R. § 23.107 to determine if
8 a child may be an Indian child, or seek a determination by the tribe. Only a tribe shall make a final
9 determination whether a child is an Indian child.

10 (b) Notice; time for commencement of proceedings; additional time for preparation. In any
11 involuntary Indian child custody proceeding in which the family court or a party to the proceeding
12 knows or has reason to know that an Indian child is involved, the party seeking the adoptive
13 placement, foster care placement, preadoptive placement or termination of parental rights of or to
14 an Indian child shall provide notice to the Indian child's Indian family, Indian parent or Indian
15 custodian and the Indian child's Indian tribe of the pending proceedings and of their right of
16 intervention. An original or a copy of each notice sent pursuant to the provisions of this subsection
17 shall be filed with the family court together with any return receipts or other proof of service. The
18 notice shall:

19 (1) Be written in clear and understandable language;

20 (2) Conform with the requirements of 25 C.F.R. § 23.111(d);

21 (3) If sent to an Indian family, Indian parent, or Indian custodian, be sent by certified mail,
22 return receipt requested;

23 (4) If sent to the Indian child's Indian tribe, be sent by certified mail, return receipt
24 requested, at the mailing address of the Indian child's Indian tribe and be sent via email at the Indian
25 tribe's email address on file with the state; and

26 (5) If the identity or location of the Indian family, Indian parent or Indian custodian and
27 the Indian tribe cannot be determined, be given to the appropriate regional director of the United
28 States Department of the Interior, Bureau of Indian Affairs in like manner.

29 (c) The first hearing in the proceeding shall not be held until at least ten (10) calendar days
30 after receipt of the notice by the Indian family, Indian parent, or Indian custodian and Indian child's
31 Indian tribe or the appropriate regional director of the United States Department of the Interior,
32 Bureau of Indian Affairs. On the request of an Indian family, Indian parent, Indian custodian or
33 Indian tribe, the family court shall grant a continuance of up to twenty (20) additional calendar days
34 to enable the requester to prepare for the hearing. The family court may create a standardized form

1 to be used to provide notice pursuant to the provisions of this section.

2 (d) Appointment of counsel. Indian families, Indian parents and Indian custodians are
3 entitled to legal counsel in any Indian child custody proceeding or emergency proceeding. An
4 Indian family, Indian parent or Indian custodian may request the family court to appoint legal
5 counsel for them. Upon a finding that an Indian family, Indian parent or Indian custodian is
6 indigent, the family court shall appoint legal counsel for the Indian family, Indian parent or Indian
7 custodian in the family court. The family court may, in its discretion, appoint counsel for the Indian
8 child upon a finding that an appointment of counsel is in the best interest of the Indian child.

9 (e) Examination of reports or other documents. Under state law and when involving an
10 Indian child, each party to a foster care placement or termination of parental rights proceeding has
11 the right to examine all reports and all other documents filed with the family court that may inform
12 any decision made with respect to the proceeding.

13 (f) Remedial services, rehabilitative programs and preventive measures. A party seeking to
14 effect a foster care placement of, or termination of parental rights to, an Indian child shall satisfy
15 the family court that active efforts have been made to provide remedial services and rehabilitative
16 programs designed to prevent the breakup of the Indian family and that these efforts have proved
17 unsuccessful.

18 (g) Involuntary foster care placement. Involuntary foster care placement shall not be
19 ordered in the absence of a determination supported by clear and convincing evidence, that:

20 (1) Includes testimony of qualified expert witnesses that the continued custody of the
21 Indian child by the parent or Indian custodian is likely to result in serious emotional or physical
22 damage to the Indian child; and

23 (2) Establishes a causal relationship between the particular conditions in the home and the
24 likelihood that continued custody of the Indian child shall result in serious emotional or physical
25 injury to the Indian child who is the subject of the Indian child custody proceeding.

26 (h) Involuntary termination of parental rights. Involuntary termination of parental rights
27 shall not be ordered in the absence of a determination supported by evidence beyond a reasonable
28 doubt, that:

29 (1) Include testimony of qualified expert witnesses that the continued custody of the Indian
30 child by the parent or Indian custodian is likely to result in serious emotional or physical injury to
31 the Indian child; and

32 (2) Establishes a causal relationship between the particular conditions in the home and the
33 likelihood that continued custody of the Indian child will result in serious emotional or physical
34 damage to the particular Indian child who is the subject of the Indian child custody proceeding.

1 **15-31-6. Parental rights; voluntary termination.**

2 (a) Consent; record; certification matters; invalid consents. When an Indian family, Indian
3 parent or Indian custodian voluntarily consents to a foster care placement or to termination of
4 parental rights, consent is not valid unless executed in writing and recorded before a judge of the
5 family court or the tribal court. The court shall certify in writing that the terms and consequences
6 of the consent were fully explained in detail and were fully understood by the Indian family, Indian
7 parent or Indian custodian. The court shall also certify on the record or in writing that the Indian
8 family, Indian parent or Indian custodian fully understood the explanation in English or that the
9 explanation was interpreted into a language that the Indian family, Indian parent or Indian custodian
10 understood. Consent is not valid if given prior to, or within ten (10) calendar days after, the birth
11 of an Indian child.

12 (b) Foster care placement; withdrawal of consent; return of custody. At any time, an Indian
13 family, Indian parent or Indian custodian may withdraw consent to a voluntary foster care
14 placement. Upon such withdrawal, the Indian child shall be returned to the Indian family, Indian
15 parent or Indian custodian within thirty (30) calendar days of withdrawal.

16 (c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent;
17 return of custody. In any voluntary proceeding for termination of parental rights to, or adoptive
18 placement of, an Indian child, the Indian family, Indian parent or Indian custodian may withdraw
19 consent for any reason at any time prior to the entry of a final decree of termination or adoption,
20 and the Indian child shall be returned to the Indian family, Indian parent or Indian custodian within
21 thirty (30) calendar days of such withdrawal.

22 (d) Collateral attack; vacation of decree and return of custody; limitations. In a voluntary
23 proceeding, after the entry of a final decree of adoption of an Indian child in the family court, the
24 Indian family, Indian parent or Indian custodian may withdraw consent to the adoption upon the
25 grounds that consent was obtained through fraud or duress and may petition the court to vacate the
26 decree. Upon a finding by clear and convincing evidence that the consent was obtained through
27 fraud or duress, the court shall vacate the decree and return the Indian child to the Indian family,
28 Indian parent or Indian custodian within thirty (30) calendar days of the court vacating the decree.

29 **15-31-7. Petition to court of competent jurisdiction to invalidate action upon showing**
30 **of certain violations.**

31 Upon a showing by clear and convincing evidence that an action or order of the family
32 court violated any provision of this chapter, the following individuals or their representative may
33 petition the family court to invalidate the action:

34 (1) An Indian child who, is the subject of an action for foster care placement or termination

1 of parental rights;

2 (2) An Indian family, Indian parent or Indian custodian from whose custody the Indian
3 child was removed; and

4 (3) The Indian child's Indian tribe.

5 **15-31-8. Placement of Indian children.**

6 (a) Adoptive placements; preferences. In the absence of good cause to the contrary, in an
7 adoptive placement of an Indian child, placement preference shall be provided, in descending order,
8 as listed below:

9 (1) An extended family member of the Indian child;

10 (2) Another member, citizen or national of the Indian child's Indian tribe;

11 (3) A member, citizen or national of an Indian tribe that is not the Indian child's Indian
12 tribe but in which the Indian child is eligible for membership, citizenship, or nationalization;

13 (4) Another Indian with whom the Indian child has a relationship with; or

14 (5) Another Indian from a tribe that is culturally similar to or linguistically connected to
15 the Indian child's Indian tribe.

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

23 (1) An extended family member of the Indian child;

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

25 (3) An institution for children approved by the Indian child's Indian tribe;

26 (4) An institution for children operated by an Indian;

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

29 (6) An organization that has a program suitable to meet the Indian child's needs.

30 (c) Good cause to deviate from placement preferences. When appropriate, the preference
31 of the Indian child, Indian family or Indian parent shall be considered when the court determines a
32 placement pursuant to the provisions of this chapter. The party seeking departure from the
33 placement preferences under this chapter bears the burden of proving by clear and convincing
34 evidence that there is good cause to depart from the placement preferences. A court's determination

1 of good cause to depart from the placement preferences shall be made on the record or in writing
2 and may be based on one or more of the following considerations:

3 (1) The request of the Indian family or the Indian parent, if they attest that they have
4 reviewed the placement options, if any, that comply with the order of preference;

5 (2) The request of the Indian child, if the Indian child is of sufficient age and has the mental
6 capacity to understand the decision that is being made;

7 (3) The presence of a sibling attachment that can be maintained only through a particular
8 placement;

9 (4) The extraordinary physical, mental or emotional needs of the Indian child including,
10 but not limited to, specialized treatment services that may be unavailable in the community where
11 potential families who meet the placement preferences live; or

12 (5) The unavailability of a suitable placement after a determination by the court that a
13 diligent search was conducted to find suitable placements meeting the preference criteria, but none
14 has been located.

15 (d) For purposes of a determination under this subsection, the standards for determining
16 whether a placement is unavailable shall conform to the prevailing social and cultural standards of
17 the Indian tribe of the Indian child, the Indian family, the Indian parent, or the extended family
18 member. A placement shall not depart from the preferences pursuant to the provisions of this
19 section based on the socioeconomic status of any placement relative to another placement; solely
20 on ordinary bonding; or on attachment that developed from time spent in a non-preferred placement
21 that was made in violation of this chapter.

22 (e) Tribal resolution for different order of preference and anonymity in application of
23 preferences. In the case of a placement pursuant to the provisions of this chapter, if the Indian
24 child's Indian tribe establishes a different order of preference, the agency or court effecting the
25 placement shall follow the order determined by the Indian child's Indian tribe. When a consenting
26 Indian family or Indian parent evidences a desire for anonymity, the court or agency shall give
27 weight to such desire in applying the preferences.

28 (f) Social and cultural standards applicable. The standards to be applied in meeting the
29 preference requirements of this section shall be the prevailing social and cultural standards of the
30 Indian tribe of the Indian child, Indian family, Indian parent or extended family member.

31 (g) Record of placement; availability. A record of each placement of an Indian child under
32 this chapter shall be maintained by the state, including all evidence of any efforts made to comply
33 with the order of preference specified in this chapter. The record shall be made available at any
34 time upon the request of the United States Secretary of the Interior or the Indian child's Indian tribe.

1 **15-31-9. Return of custody.**

2 (a) Petition; best interests of Indian child. Notwithstanding any provision of law to the
3 contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or
4 when the adoptive parents voluntarily consent to the termination of their parental rights to an Indian
5 child, the Indian family, an Indian parent, or a prior Indian custodian may petition for return of
6 custody. Unless there is a showing in a proceeding subject to the provisions of this chapter, that the
7 return of custody is not in the best interests of the Indian child, the court shall grant the petition.

8 (b) Removal from foster care placement; procedure. Except for a case in which an Indian
9 child is being returned to the Indian family, the Indian parent, or the Indian custodian from whose
10 custody the Indian child was originally removed, whenever an Indian child is removed from a foster
11 care home or institution for the purpose of further foster care placement, preadoptive placement, or
12 adoptive placement, such placement must be in accordance with the provisions of this chapter.

13 **15-31-10. Disclosure of tribal affiliation information.**

14 Upon application by an individual who has reached eighteen (18) years of age; was an
15 Indian child; and was the subject of an adoptive placement, the family court that entered the final
16 decree shall inform the individual of the tribal affiliation, if any, of the individual's biological
17 parent or parents and shall provide the individual with any other information necessary to protect
18 any rights of the individual that arise from the individual's tribal relationship.

19 **15-31-11. Improper removal of Indian child from custody; declination of jurisdiction;**
20 **forthwith return of Indian child; danger exception.**

21 Unless returning the Indian child to the Indian child's Indian family, Indian parent or Indian
22 custodian would subject the Indian child to a substantial and immediate danger or threat of danger,
23 if a petitioner in an Indian child custody proceeding before the family court improperly removed
24 the Indian child from custody of the Indian family, an Indian parent or Indian custodian or if custody
25 has been improperly retained after a visit or other temporary relinquishment of custody, the family
26 court shall either decline jurisdiction over the petition or shall forthwith order return the Indian
27 child to the child's Indian family, Indian parent or Indian custodian within thirty (30) calendar days.

28 **15-31-12. Higher state or federal standard applicable to protect rights of parent or**
29 **Indian custodian of Indian child; interpretive guidance.**

30 In any case in which state or federal law provides a higher standard of protection to the
31 rights of the Indian child's Indian family, Indian parent or Indian custodian than the rights provided
32 under this chapter, the state or federal court shall apply the higher state or federal standard. To the
33 extent any procedure of an Indian child custody proceeding is not addressed in this chapter, then
34 25 C.F.R. Part 23 shall govern the determination in the proceeding.

1 **15-31-13. Emergency removal or placement of an Indian child; termination;**
2 **appropriate action.**

3 (a) Emergency removal or placement. In order to prevent imminent physical damage or
4 harm to an Indian child, this chapter does not prevent:

5 (1) The emergency removal of an Indian child from their Indian family, Indian parent or
6 Indian custodian, if the Indian child is a resident of or is domiciled on a reservation, but is
7 temporarily located off the reservation; or

8 (2) The emergency placement of an Indian child in a foster home or institution under the
9 laws of this state.

10 (b) Termination. An emergency removal or placement of an Indian child shall terminate
11 immediately when the removal or placement is no longer necessary to prevent imminent physical
12 damage or harm to the Indian child. An emergency removal or placement of an Indian child may
13 be terminated by, but is not necessarily terminated by:

14 (1) Initiation of an Indian child custody proceeding subject to the provisions this chapter;

15 (2) Transfer of the Indian child to the jurisdiction of the appropriate Indian tribe; or

16 (3) Restoration of the Indian child to the Indian family, Indian parent or Indian custodian.

17 (c) Procedure applicable to emergency proceedings. In any emergency proceeding in
18 family court, the court shall:

19 (1) Make a finding on the record, supported by clear and convincing evidence, that the
20 emergency removal or placement is necessary to prevent imminent physical damage or harm to the
21 Indian child;

22 (2) Promptly hold a hearing on whether the emergency removal or placement continues to
23 be necessary whenever new information indicates that the emergency situation has ended; and

24 (3) At any family court hearing during the emergency proceeding, determine whether there
25 is clear and convincing evidence demonstrating that the emergency removal or placement remains
26 necessary to prevent imminent physical damage or harm to the Indian child and, if not, immediately
27 terminate or ensure that the petitioning party immediately terminates the emergency proceeding.

28 **15-31-14. Qualified expert witness.**

29 (a) Identification. In any proceeding subject to this chapter that requires the testimony of a
30 qualified expert witness, the qualified expert witness shall be provided by the petitioner and shall
31 meet the criteria of subsection (c) or (d) of this section. A qualified expert witness may be identified
32 based on information from the Indian child's tribe or with the assistance of the United States
33 Department of the Interior, Bureau of Indian Affairs.

34 (b) Testimony provided. In any proceeding subject to this chapter that requires the

1 testimony of a qualified expert witness, at least one qualified expert witness shall testify regarding:

2 (1) The prevailing social and cultural standards and child-rearing practices of the Indian
3 child's tribe; and

4 (2) Whether the Indian child's continued custody by the Indian child's Indian family, Indian
5 parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian
6 child.

7 (c) Tribal qualification. A person is a qualified expert witness pursuant to the provision of
8 this chapter if the Indian child's tribe has designated the person as qualified to testify to the
9 prevailing social and cultural standards of the Indian tribe.

10 (d) Alternative qualification. If the Indian child's Indian tribe has not designated a qualified
11 expert witness or if the designated qualified expert witness is unavailable, the following individuals,
12 in descending order of priority, may testify as a qualified expert witness:

13 (1) A member of the Indian child's Indian tribe who is recognized by the tribal community
14 as knowledgeable in tribal customs as they pertain to family organization and child-rearing
15 practices;

16 (2) A member, citizen, or national of another Indian tribe who is recognized to be a
17 qualified expert witness by the Indian child's Indian tribe;

18 (3) A layperson who is recognized by the Indian child's Indian tribe as having substantial
19 experience in the delivery of child and family services to Indians, and knowledge of prevailing
20 social and cultural standards and child-rearing practices within the Indian child's Indian tribe; or

21 (4) A professional person having substantial education and experience in the area of the
22 professional person's specialty who can demonstrate knowledge of the prevailing social and cultural
23 standards and child-rearing practices within the Indian child's Indian tribe.

24 (e) Disqualified persons. Neither a petitioning party, an employee of the petitioning party
25 nor an employee of either the Rhode Island department of human services or the Rhode Island
26 executive office of health and human services may serve as a qualified expert witness.

27 **15-31-15. Agreements between the state and Indian tribes.**

28 The state may enter into agreements with Indian tribes with respect to the care and custody
29 of Indian children and jurisdiction over Indian child custody proceedings, including agreements
30 that provide for orderly transfer of jurisdiction on a case-by-case basis and agreements that provide
31 for concurrent jurisdiction between the state and Indian tribes. A revocation of an agreement under
32 this section does not affect any action or proceeding over which the family court or a tribal court
33 has already assumed jurisdiction, unless the agreement provides otherwise.

34 SECTION 3. Section 15-14.1-4 of the General Laws in Chapter 15-14.1 entitled "Uniform

1 Child Custody Jurisdiction and Enforcement Act" is hereby amended to read as follows:

2 **15-14.1-4. Application to Indian tribes.**

3 (a) A child custody proceeding that pertains to an Indian child as defined in the "Indian
4 Child Welfare Act," 25 U.S.C. § 1901 et seq., [or the provisions of chapter 31 of title 15 shall](#) ~~is~~-not
5 [be](#) subject to this chapter to the extent that it is governed by the "Indian Child Welfare Act." [or](#)
6 [chapter 31 of title 15.](#)

7 (b) A court of this state shall treat a tribe as if it were a state of the United States for the
8 purpose of applying this chapter.

9 (c) A child custody determination made by a tribe under factual circumstances in
10 substantial conformity with the jurisdictional standards of this chapter ~~must~~ [shall](#) be recognized and
11 enforced under this chapter.

12 SECTION 4. This act shall take effect upon passage.

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LC004558
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO DOMESTIC RELATIONS -- THE RHODE ISLAND INDIAN CHILD
WELFARE ACT

1 This act would establish specific requirements for determination of custody of Indian
2 children. With limited exceptions, tribal courts would determine custody and placement issues for
3 Indian children. The act would further provide that Indian tribes shall be treated as if the tribe were
4 a state of the United States for purposes of the application of chapter 31 of title 15. This act would
5 also disqualify any employee of the Rhode Island Department of Human Services or the Executive
6 Office of Health and Human Services from testifying as an expert witness in a child custody or
7 placement case involving an Indian child.

8 This act would take effect upon passage.

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