

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

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

Sec. 23.

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

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

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

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

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

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

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

- (a) A request was made by a child of sufficient age.
- (b) A child has an extraordinary physical or emotional need as established by testimony of an expert witness.
- (6) In the case of a placement under subsection (1) or (2), if the Indian child's tribe establishes a different order of preference, the department or court ordering the placement shall follow the tribe's order of preference.

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

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

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

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

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

Popular Name: Probate Code